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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 96–014DF]

RIN 0583–AC16

Carrageenan, Locust Bean Gum and Xanthan Gum Blend Used as a Binder in Certain Cured Pork Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to permit the use of a blend of carrageenan, locust bean gum, and xanthan gum as a binder in cured pork products labeled ''Ham Water Added'' and ''Ham and Water Product—X% of Weight is Added Ingredients.'' FSIS currently permits the use of other specified binders in these cured pork products. The maximum use level of 0.5 percent will prevent purging of the pumped brine solution from the products, thereby retaining product moisture and enhancing texture.

DATES: This rule will be effective January 20, 1998 unless FSIS receives written adverse comments within the scope of this rulemaking or written notice of intent to submit adverse comments within the scope of this rulemaking on or before December 19, 1997. If written adverse comments or notice of intent to submit adverse comments is received, FSIS will publish timely notice of the withdrawal of this rule in the **Federal Register.**

ADDRESS: Submit adverse comments or notice of intent to submit adverse comments within the scope of this rulemaking to: FSIS Docket Clerk, Docket #96–014DF, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. Reference materials cited in this document will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Post, Labeling and Compounds Review Division, Office of Policy, Program Development and Evaluation; (202) 418–8900.

SUPPLEMENTARY INFORMATION: On July 18, 1995, FSIS was petitioned by Vedeqsa, S.A., to approve the use of a blend of carrageenan, locust bean gum, and xanthan gum as a binder in cured pork products labeled ''Ham Water Added'' and ''Ham and Water Product—X% of Weight is Added Ingredients,'' in an amount not exceeding 0.5 percent of product formulation, to prevent purging of the brine solution. During manufacturing, these ham products are pumped with a brine solution, the ultimate level of which is controlled by a protein-fat-free (PFF) standard described in 9 CFR 319.104. PFF is the minimum meat protein which is indigenous to the raw, unprocessed pork, expressed as a percent of the nonfat portion of the finished product. These products are normally packaged in clear plastic and enclosed by a vacuum seal. Subsequent to the curing process, the brine purges from the products, settling in the products' packages, reducing the moisture content of the products and negatively affecting their appearance and quality.

FSIS currently permits the use of carrageenan as an extender and stabilizer in breading mixes and sauces for use in meat products at a level sufficient for that purpose, and in ''Ham Water Added'' and ''Ham and Water Product—X% of Weight is Added Ingredients'' up to 1.5 percent of product formulation to prevent purging of brine solution. FSIS also permits the use of xanthan gum as an emulsifier, stabilizer, or thickener in meat sauces, gravies, canned or frozen meat salads or stews, canned chili, pizza topping mixes, and batter and breading mixes, at a level sufficient for that purpose.

The Food and Drug Administration (FDA) lists locust (carob) bean gum as generally recognized as safe as a stabilizer and thickener with a maximum usage level of 0.5 percent when used in meat products (21 CFR 184.1343). FDA has provided FSIS with a letter dated October 13, 1995, concurring with FSIS's determination that the petitioned use of a blend of carrageenan, locust bean gum, and xanthan gum in combination is acceptable for use as a binder matrix (blend) to prevent purging of added brine solution in certain cured pork products.

The petitioner submitted data to show that at a use level of 0.5 percent, a blend consisting of 70 percent carrageenan, 15 percent locust bean gum and 15 percent xanthan gum reduces the purge of brine in water-added hams as well as carrageenan alone. After reviewing this, and the petitioner's other technical data and information, FSIS has determined that 9 CFR 318.7(c)(4) should be amended to permit the use of any blend of carrageenan, locust bean gum, and xanthan gum in ''Ham Water Added'' and ''Ham and Water Product—X% of Weight is Added Ingredients'' products at a level not to exceed 0.5 percent of the product formulation weight. Such use will reduce the amount of purge from the ham products during storage. This binder is not permitted to be used in combination with any other binder approved for use in cured pork products. This binder shall be designated in the ingredients statement, as provided in 9 CFR 319.104(d).

FSIS expects no adverse public reaction resulting from this change in regulatory language. Therefore, unless the Agency receives adverse comments within the scope of the rulemaking, or notice of intent to submit adverse comments within the scope of the rulemaking within 30 days, the action will become final 60 days after publication in the **Federal Register**. If adverse comments within the scope of the rulemaking are received, the direct final rulemaking notice will be withdrawn and a proposed rulemaking notice will establish a comment period.

Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this direct final rule is adopted: (1) All state and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be

required before parties may file suit in court challenging this rule.

Executive Order 12866 and Regulatory Flexibility Act

This direct final rule has been determined to be not significant and, therefore, has not been reviewed by OMB.

Effect on Small Entities

The Administrator, FSIS, has made a determination that this direct final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This direct final rule permits the use of an additional binder matrix, a blend of carrageenan, locust bean gum, and xanthan gum, in ''Ham Water Added'' and ''Ham and Water Product—X% of Weight is Added Ingredients.'' Manufacturers opting to use the binder blend would incur labeling expenses in revising the ingredients statements of their labels to show the presence of the blend. Decisions by individual manufacturers on whether to use the binder blend in these cured pork products would be based on their conclusions that the benefits outweigh the implementation costs.

Paperwork Requirements

Manufacturers opting to use a blend of carrageenan, locust bean gum, and xanthan gum as a binder in specific pork products must revise their product labels. Such labeling changes will be generically approved in accordance with 9 CFR 317.5. Any burden associated with labeling changes are approved under OMB number 0583–0092.

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

For the reasons set out in the preamble, 9 CFR part 318 is amended as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. In section 318.7(c)(4), under the Class of substance ''Binders and extenders,'' a new entry for the substance ''Carrageenan, Locust Gum Bean, and Xanthan Gum Blend'' is added at the end to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of Substance	Substance	Purpose	Products	Amount
*	*	*	*	*
Binders and extenders	Carrageenan, Locust bean gum, and Xanthan gum blend.	To prevent purging of brine solution.	Cured pork products as provided in 9 CFR 319.104(d).	In combination, not to exceed 0.5 percent of product formulation; not permitted in combination with other binders approved for use in cured pork products; in accordance with 21 CFR 172.620, 172.623, 172.626, 184.1343, and 172.695
*	*	*	*	*

Done at Washington, DC, on November 10, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–30324 Filed 11–18–97; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–0945]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to decrease the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act, from $49.3 million to $47.8 million of net transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board is increasing from $4.4 million to $4.7 million the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent. This action is required by section 19(b)(11)(B) of the Federal Reserve Act, and the adjustment is known as the reservable liabilities exemption adjustment. The Board is also increasing the deposit cutoff levels that are used in conjunction with the reservable liabilities exemption to determine the frequency of deposit reporting from $75.0 million to $78.9 million for nonexempt depository institutions and from $48.2 million to $50.7 million for exempt institutions. (Nonexempt institutions are those with total reservable liabilities exceeding the amount exempted from reserve requirements ($4.7 million) while exempt institutions are those with total reservable liabilities not exceeding the amount exempted from reserve requirements.) Thus, beginning in September 1998, nonexempt institutions with total deposits of $78.9 million or more will be required to report weekly while nonexempt institutions with total deposits less than $78.9 million may report quarterly, in both cases on form FR 2900. Similarly, exempt institutions with total deposits of $50.7 million or more will be required to report quarterly on form FR 2910q while exempt institutions with total deposits less than $50.7 million may report annually on form FR 2910a.

DATES: *Effective date:* December 16, 1997.

Compliance dates: For depository institutions that report weekly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 30, 1997, and the corresponding reserve maintenance period that begins Thursday, January 1, 1998. For institutions that report quarterly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 16, 1997, and the corresponding reserve maintenance period that begins Thursday, January 15, 1998. For all depository institutions, the deposit cutoff levels will be used to screen institutions in the second quarter of 1998 to determine the reporting frequency for the twelve month period that begins in September 1998.

FOR FURTHER INFORMATION CONTACT: Rick Heyke, Attorney (202/452–3688), Legal

Division, or June O'Brien, Economist (202/452–3790), Division of Monetary Affairs; for the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD)(202/452–3544); Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for net transaction accounts of $25 million or less and at 12 percent on net transaction accounts above $25 million for each depository institution. Effective April 2, 1992, the Board lowered the required reserve ratio applicable to transaction account balances exceeding the low reserve tranche from 12 percent to 10 percent. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The adjustment in the tranche is to be 80 percent of the percentage increase or decrease in net transaction accounts at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Currently, the low reserve tranche on net transaction accounts is $49.3 million. Net transaction accounts of all depository institutions decreased by 3.7 percent (from $740.1 billion to $712.8 billion) from June 30, 1996, to June 30, 1997. In accordance with section 19(b)(2), the Board is amending Regulation D (12 CFR Part 204) to decrease the low reserve tranche for transaction accounts for 1998 by $1.5 million to $47.8 million.

Section 19(b)(11)(A) of the Federal Reserve Act (12 U.S.C. 461 (b)(11)(B)) provides that $2 million of reservable liabilities [1] of each depository institution shall be subject to a zero percent reserve requirement. Each depository institution may, in accordance with the rules and regulations of the Board, designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if net transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (i.e., net transaction accounts within the low reserve requirement tranche) may be so designated.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. Unlike the adjustment for the low reserve tranche on net transaction accounts, which adjustment can result in a decrease as well as an increase, the change in the exemption amount is to be made only if the total reservable liabilities held at all depository institutions increase from one year to the next. The percentage increase in the exemption is to be 80 percent of the increase in total reservable liabilities of all depository institutions as of the year ending June 30. Total reservable liabilities of all depository institutions increased by 7.7 percent (from $1,695.1 billion to $1,824.8 billion) from June 30, 1996, to June 30, 1997. Consequently, the reservable liabilities exemption amount for 1998 under section 19(b)(11)(B) will be increased by $0.3 million to $4.7 million.[2]

The effect of the application of section 19(b) of the Federal Reserve Act to the change in the total net transaction accounts and the change in the total reservable liabilities from June 30, 1996, to June 30, 1997, is to decrease the low reserve tranche to $47.8 million, to apply a zero percent reserve requirement on the first $4.7 million of transaction accounts, and to apply a three percent reserve requirement on the remainder of the low reserve tranche.

The tranche adjustment and the reservable liabilities exemption adjustment for weekly reporting institutions will be effective for the reserve computation period beginning Tuesday, December 30, 1997, and for the corresponding reserve maintenance period beginning Thursday, January 1, 1998. For institutions that report quarterly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective for the computation period beginning Tuesday, December 16, 1997, and for the reserve maintenance period beginning Thursday, January 15, 1998. In addition, all institutions currently submitting form FR 2900 must continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board has established deposit reporting cutoff levels to determine deposit reporting frequency. Institutions are screened during the second quarter of each year to determine reporting frequency beginning the following September. In July of 1988 the Board set a single cutoff level for all depository institutions of $40 million plus an amount equal to 80 percent of the annual rate of increase of total deposits.[3] In August of 1994, the Board replaced the single deposit cutoff level that had applied to both nonexempt and exempt institutions with separate cutoff levels, increasing the cutoff level for nonexempt institutions, and in September 1997 further increased the cutoff level for nonexempt institutions. The cutoff level for nonexempt institutions, which determines whether they report (on FR 2900) quarterly or weekly, was thereby raised to $75.0 million. The deposit cutoff level for exempt institutions, which determines whether they report annually (on FR 2910a) or quarterly (on FR 2910q), remained at the indexed level of $48.2 million.

From June 30, 1996, to June 30, 1997, total deposits increased 6.6 percent, from $4,168.2 billion to $4,442.2 billion.

Accordingly, the nonexempt deposit cutoff level will increase by $3.9 million to $78.9 million and the exempt deposit cutoff level will increase by $2.5 million to $50.7 million. Based on the indexation of the reservable liabilities exemption, the cutoff level for total deposits above which reports of deposits must be filed will rise from $4.4 million to $4.7 million. Institutions with total deposits below $4.7 million will be excused from reporting if their deposits can be estimated from other data sources. The $78.9 million cutoff level for weekly versus quarterly FR 2900 reporting for nonexempt institutions, the $50.7 million cutoff level for quarterly FR 2910q versus annual FR 2910a reporting for exempt institutions, and the $4.7 million level threshold for reporting will be used in the second quarter 1998 deposits report screening process, and the adjustments will be made when the new deposit reporting panels are implemented in September 1998.

All U.S. branches and agencies of foreign banks and all Edge and agreement corporations, regardless of size, are required to file weekly the

[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act. The reserve ratio on nonpersonal time deposits and Eurocurrency liabilities is zero percent.

[2] Consistent with Board practice, the tranche and exemption amounts have been rounded to the nearest $0.1 million.

[3] ''Total deposits'' as used in determining the cutoff level includes not only gross transaction deposits, savings accounts, and time deposits, but also reservable obligations of affiliates, ineligible acceptance liabilities, and net Eurocurrency liabilities.

Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). After the indexations become effective in 1998, all other institutions that have reservable liabilities in excess of the exemption level of $4.7 million prescribed by section 19(b)(11) of the Federal Reserve Act (known as ''nonexempt institutions'') and total deposits at least equal to the nonexempt deposit cutoff level ($78.9 million) will be required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900) for the twelve month period starting September 1998. However, nonexempt institutions with total deposits less than the nonexempt deposit cutoff level ($78.9 million), will be able to file the FR 2900 quarterly. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report of Certain Eurocurrency Transactions (FR 2950/2951) at the same frequency as they file the FR 2900.

Institutions with reservable liabilities at or below the exemption level ($4.7 million) (known as exempt institutions) will be required to file the Quarterly Report of Selected Deposits, Vault Cash, and Reservable Liabilities (FR 2910q) if their total deposits equal or exceed the exempt deposit cutoff level ($50.7 million). Exempt institutions with total deposits less than the exempt deposit cutoff level ($50.7 million) but at least equal to the exemption amount ($4.7 million) will be able to file the Annual Report of Total Deposits and Reservable Liabilities (FR 2910a). Institutions that have total deposits less than the exemption amount ($4.7 million) are not required to file deposit reports if their deposits can be estimated from other data sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or overstates the deductions allowed in computing required reserve balances.

Notice and Public Participation

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve expected, ministerial adjustments prescribed by statute and by an interpretative statement reaffirming the Board's policy concerning reporting practices. Moreover, the low reserve tranche adjustment and the reservable liabilities exemption adjustment are required to be effective for the next calendar year even though the data which they are required to reflect are only available late in the prior year. In addition, the reservable liabilities exemption adjustment and the increases for reporting purposes in the deposit cutoff levels reduce regulatory burdens on depository institutions, and the low reserve tranche adjustment will have a *de minimis* effect on depository institutions with net transaction accounts exceeding $47.8 million. Accordingly, the Board finds good cause for determining, and so determines, that notice and public participation is unnecessary, impracticable, or contrary to the public interest.

The provisions of 5 U.S.C. 553(d) relating to notice of the effective date of a rule have not been followed in connection with the adoption of these amendments because the low reserve tranche adjustment and the reservable liabilities adjustment are expected, ministerial amendments prescribed by statute. Moreover, they are required to be effective for the next calendar year even though the data which they are required to reflect are only available late in the prior year. In addition, the reservable liabilities adjustment and the increase in deposit cutoff levels for reporting purposes relieve a restriction on depository institutions, and the low reserve tranche will have a *de minimis* effect on depository institutions with net transaction accounts exceeding $47.8 million. Accordingly, there is good cause to determine, and the Board so determines, that such notice is impracticable or unnecessary.

Regulatory Flexibility Analysis

The Board certifies that these amendments will not have a substantial economic impact on small depository institutions. *See* ''Notice and Public Participation'' above.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. Section 204.9 is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement [1]
Net transaction accounts:	
$0 to $47.8 million	3 percent of amount.
over $47.8 million ..	$1,434,000 plus 10 percent of amount over $47.8 million
Nonpersonal time deposits.	0 percent.
Eurocurrency liabilities.	0 percent.

[1] Before deducting the adjustment to be made by the paragraph (b) of this section.

(b) *Exemption from reserve requirements.* Each depository institution, Edge or agreement corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a) of this section not in excess of $4.7 million determined in accordance with § 204.3(a)(3).

By order of the Board of Governors of the Federal Reserve System, November 13, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–30237 Filed 11–18–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–14]

Revocation of Class E Airspace; Marietta Dobbins ARB (NAS Atlanta), GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes Class E surface area airspace at Marietta Dobbins Air Reserve Base (ARB) (Naval Air Station [NAS] Atlanta). The required weather observations are no longer being taken after the control tower closes; therefore, the airport no longer meets the criteria for Class E surface area airspace.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 305–5491.

SUPPLEMENTARY INFORMATION: Weather observations are a requirement for Class E surface area airspace. Since weather observations are no longer taken at Marietta Dobbins ARB (NAS Atlanta) after the control tower closes, the requirement for Class E surface area airspace is no longer being met; therefore, the Class E surface area airspace is no longer being met; therefore, the Class E surface area airspace must be revoked. This rule will become effective on the date specified in the **EFFECTIVE DATE** section. Since this action revokes the Class E surface area airspace, and as a result, eliminates the impact of Class E airspace on users of the airspace in the vicinity of Marietta Dobbins ARB (NAS Atlanta), notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Designations for Class E airspace areas designated as a surface area for an airport are published in FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO GA E2 Marietta Dobbins ARB (NAS Atlanta), GA [Removed]

* * * * *

Issued in College Park, Georgia, on November 3, 1997.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–30355 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket 97–ASO–13]

Establishment of Class E Airspace; Guntersville, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class E airspace area at Guntersville, AL. A Global Positioning System (GPS)-A Standard Instrument Approach Procedure (SIAP) has been developed for Guntersville Municipal Airport. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Guntersville Municipal Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5576.

SUPPLEMENTARY INFORMATION:

History

On September 12, 1997, the FAA proposed to amend 14 CFR part 71 by establishing Class E airspace at Guntersville, AL (62 FR 48025). This action would provide adequate Class E airspace for IFR operations at Guntersville Municipal Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Guntersville, AL. Additionally, this rule makes a technical amendment to the legal description of the airspace area by adding words that exclude an adjacent Class E airspace area. A GPS–A SIAP has been developed for Guntersville Municipal Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate this SIAP and for IFR operations at Guntersville Municipal Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO FL E5 Guntersville, AL [New]

Guntersville Municipal Airport, AL
(lat. 34°23′57″ N, long. 86°16′12″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Guntersville Municipal Airport, excluding that airspace within the Albertville, AL, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on November 3, 1997.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–30357 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, and 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor for 61 approved new animal drug applications (NADA's) from Mallinckrodt Veterinary, Inc., to Schering-Plough Animal Health Corp.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Mallinckrodt Veterinary, Inc., Mundelein, IL 60060, has informed FDA that it has transferred the ownership of, and all rights and interests in the approved NADA's to Schering-Plough Animal Health Corp. The agency is amending 21 CFR 510, 520, 522, 524, and 558 to reflect the change of sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, and 524

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, 524, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for ''Mallinckrodt Veterinary Inc.''; and in the table in paragraph (c)(2) by removing the entry for ''011716''.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

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

§ 520.82a [Amended]

4. Section 520.82a *Aminopropazine fumarate tablets* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 520.82b [Amended]

5. Section 520.82b *Aminopropazine fumarate, neomycin sulfate tablets* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 520.222 [Amended]

6. Section 520.222 *Bunamidine hydrochloride* is amended in paragraph (c) by removing ''011716'' and adding in its place ''000061''.

§ 520.580 [Amended]

7. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(2) by removing ''011716'' and adding in its place ''000061''.

§ 520.622c [Amended]

8. Section 520.622c *Diethylcarbamazine citrate chewable tablets* is amended in paragraph (b)(5) by removing ''011716'' and adding in its place ''000061''.

§ 520.784 [Amended]

9. Section 520.784 *Doxylamine succinate tablets* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 520.863 [Amended]

10. Section 520.863 *Ethylisobutrazine hydrochloride tablets* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 520.1120a [Amended]

11. Section 520.1120a *Haloxon drench* is amended in paragraph (c) by removing ''011716'' and adding in its place ''000061''.

§ 520.1120b [Amended]

12. Section 520.1120b *Haloxon boluses* is amended in paragraph (c) by removing ''011716'' and adding in its place ''000061''.

§ 520.1242a [Amended]

13. Section 520.1242a *Levamisole hydrochloride drench and drinking water* is amended in paragraph (c)(2) by removing ''011716'' and adding in its place ''000061''.

§ 520.1242b [Amended]

14. Section 520.1242b *Levamisole hydrochloride tablet or oblet (bolus)* is amended in paragraph (c) by removing ''011716'' and adding in its place ''000061''.

§ 520.1242g [Amended]

15. Section 520.1242g *Levamisole resinate and famphur paste* is amended in paragraph (c) by removing ''011716'' and adding in its place ''000061''.

§ 520.1320 [Amended]

16. Section 520.1320 *Mebendazole oral* is amended in paragraph (c) by removing ''011716'' and adding in its place ''000061''.

§ 520.1326a [Amended]

17. Section 520.1326a *Mebendazole and trichlorfon powder* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 520.1326b [Amended]

18. Section 520.1326b *Mebendazole and trichlorfon paste* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 520.1720a [Amended]

19. Section 520.1720a *Phenylbutazone tablets and boluses* is amended in paragraph (b)(1) by removing ''011716'' and adding in its place ''000061''.

§ 520.1720b [Amended]

20. Section 520.1720b *Phenylbutazone granules* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 520.1720c [Amended]

21. Section 520.1720c *Phenylbutazone paste* is amended in paragraph (b) by removing ''010797 and 011716'' and adding in its place ''000061 and 010797''.

§ 520.1805 [Amended]

22. Section 520.1805 *Piperazine phosphate with thenium closylate tablets* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 520.2220b [Amended]

23. Section 520.2220b *Sulfadimethoxine tablets and boluses* is amended in paragraph (b)(3) by removing ''011716'' and adding in its place ''000061''.

§ 520.2220c [Amended]

24. Section 520.2220c *Sulfadimethoxine oral suspension* is amended in paragraph (c) by removing ''000069 and 011716'' and adding in its place ''000061 and 000069''.

§ 520.2362 [Amended]

25. Section 520.2362 *Thenium closylate tablets* is amended in paragraph (c) by removing ''011716'' and adding in its place ''000061''.

§ 520.2610 [Amended]

26. Section 520.2610 *Trimethoprim and sulfadiazine tablets* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 520.2611 [Amended]

27. Section 520.2611 *Trimethoprim and sulfadiazine oral paste* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 520.2612 [Amended]

28. Section 520.2612 *Trimethoprim and sulfadiazine oral suspension* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 522.82 [Amended]

30. Section 522.82 *Aminopropazine fumarate sterile solution injection* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 522.150 [Amended]

31. Section 522.150 *Azaperone injection* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 522.784 [Amended]

32. Section 522.784 *Doxylamine succinate injection* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 522.863 [Amended]

33. Section 522.863 *Ethylisobutrazine hydrochloride injection* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 522.1155 [Amended]

34. Section 522.1155 *Imidocarb dipropionate sterile powder* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 522.1244 [Amended]

35. Section 522.1244 *Levamisole phosphate injection* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 522.1503 [Amended]

36. Section 522.1503 *Neostigmine methylsulfate injection* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 522.1704 [Amended]

37. Section 522.1704 *Sodium pentobarbital injection* is amended in paragraph (a)(2) by removing ''011716'' and adding in its place ''000061''.

§ 522.1720 [Amended]

38. Section 522.1720 *Phenylbutazone injection* is amended in paragraph (b)(1) by removing ''011716'' and adding in its place ''000061''.

§ 522.2005 [Amended]

39. Section 522.2005 *Propofol injection* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 522.2610 [Amended]

40. Section 522.2610 *Trimethoprim and sulfadiazine sterile suspension* is amended in paragraph (a)(2) by removing ''000856 and 011716'' and adding in its place ''000061 and 000856''.

§ 522.2680 [Amended]

41. Section 522.2680 *Zeranol* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

42. The authority citation for 21 CFR part 524 continues to read as follows:

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

§ 524.154 [Amended]

43. Section 524.154 *Bacitracin or bacitracin zinc-neomycin sulfate-polymyxin B sulfate ophthalmic ointment* is amended in paragraph (a)(2) by removing ''011716'' and adding in its place ''000061''.

§ 524.155 [Amended]

44. Section 524.155 *Bacitracin zinc-polymyxin B sulfate-neomycin sulfate-hydrocortisone or hydrocortisone acetate ophthalmic ointment* is amended in paragraph (a)(1) by removing ''011716'' and adding in its place ''000061''.

§ 524.900 [Amended]

45. Section 524.900 *Famphur* is amended in paragraph (c) by removing ''011716'' and adding in its place ''000061''.

§ 524.1240 [Amended]

46. Section 524.1240 *Levamisole* is amended in paragraph (b) by removing ''010042 and 011716'' and adding in its place ''000061 and 010042''.

§ 524.1443 [Amended]

47. Section 524.1443 *Miconazole nitrate cream; miconazole nitrate lotion; miconazole nitrate spray* is amended in paragraph (b) by removing ''011716'' and adding in its place ''000061''.

§ 524.1742 [Amended]

48. Section 524.1742 *N-(Mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorodithioate) emulsifiable liquid* is amended in paragraph (b) by removing ''011536 and 011716'' and adding in its place ''000061 and 011536''.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

49. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.175 [Amended]

50. Section 558.175 *Clopidol* is amended in paragraph (c)(1)(iii)(*b*) and (c)(1)(iv)(*b*) by removing ''011716'' and adding in its place ''000061''.

§ 558.195 [Amended]

51. Section 558.195 *Decoquinate* is amended in the table in paragraph (d), under the ''Limitations'' column by removing ''011716'' wherever it appears and adding in its place ''000061''.

§ 558.254 [Amended]

52. Section 558.254 *Famphur* is amended in paragraph (a) by removing ''011716'' and adding in its place ''000061''.

§ 558.311 [Amended]

53. Section 558.311 *Lasalocid* is amended in the table in paragraph (e)(1)(ii), under the ''Limitations'' column, 5th paragraph, by removing ''011716'' and adding in its place ''000061''.

§ 558.515 [Amended]

54. Section 558.515 *Robenidine hydrochloride* is amended in paragraph (d)(1)(vi)(*b*) by removing ''011716'' and adding in its place ''000061''.

Dated: November 3, 1997.

Robert C. Livingston,

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

[FR Doc. 97–30337 Filed 11–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Oral Dosage Form New Animal Drugs; Orbifloxacin Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health. The supplemental NADA provides for veterinary prescription use of orbifloxacin tablets for management of diseases in cats associated with bacteria susceptible to orbifloxacin.

EFFECTIVE DATE: NOVEMBER 19, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph J. Bertone, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1692.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083, is sponsor of NADA 141–081 Orbax™ (orbifloxacin) tablets that provide for veterinary prescription use in dogs for management of diseases associated with bacteria susceptible to orbifloxacin. The sponsor filed a supplemental NADA providing for veterinary prescription use of orbifloxacin tablets for management of diseases in cats associated with bacteria susceptible to orbifloxacin. The supplemental NADA is approved as of September 18, 1997, and the regulations are amended in 21 CFR 520.1616 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Furthermore, certain limitations, although required in the labeling, are not required in the regulation. Those limitations are removed from the regulation at this time.

Also, the sponsor's address has been changed. At this time, the address in the list of sponsors of approved applications in 21 CFR 510.600(c)(1) and (c)(2) is amended to reflect the new address.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning September 18, 1997, because the supplemental application contains substantial evidence of the effectiveness of the drug involved or studies of target animal safety required for approval and conducted or sponsored by the applicant. Three years marketing exclusivity is limited to use of orbifloxacin tablets for cats.

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

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for

''Schering-Plough Animal Health'' and in paragraph (c)(2) in the entry for ''000061'' by removing the current address and adding in its place the address ''1095 Morris Ave., Union, NJ 07083''.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

§ 520.1616 [Amended]

2. Section 520.1616 *Orbifloxacin tablets* is amended in the heading of paragraph (d)(1) and in paragraph (d)(1)(iii) by adding after the word ''dogs'' the phrase ''and cats'', and in paragraph (d)(1)(iii) by removing the phrase ''2.5 milligrams per kilogram of body weight'' and the second, third, and fourth sentences.

Dated: October 22, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–30411 Filed 11–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Amprolium Plus Ethopabate With Bacitracin Zinc

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma Inc. The ANADA provides for using approved amprolium plus ethopabate and bacitracin zinc Type A medicated articles to make Type C medicated feeds used for prevention of coccidiosis in broiler and replacement chickens and improved feed efficiency in broiler chickens.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA 200–205 that provides for combining approved amprolium plus ethopabate and bacitracin zinc Type A medicated articles to make Type C medicated feeds for broilers containing amprolium 113.5 grams per ton (g/t) plus ethopabate 36.3 g/t and bacitracin zinc 4 to 50 g/t. The Type C medicated feed is used: (1) As an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina, E. maxima*, and *E. brunetti* is likely to occur in broiler chickens and replacement chickens where immunity to coccidiosis is not desired, and for increased rate of weight gain in broiler chickens raised in floor pens; (2) as an aid in the prevention of coccidiosis where severe exposure to coccidiosis from *Eimeria acervulina, E. maxima*, and *E. brunetti* is likely to occur; and (3) for improved feed efficiency in broiler chickens.

Alpharma Inc.'s ANADA 200–205 is approved as a generic copy of Hoffmann-LaRoche, Inc.'s NADA 114–794. The ANADA is approved as of September 19, 1997, and the regulations are amended in the table in 21 CFR 558.58(d)(1)(iii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.58 [Amended]

2. Section 558.58 *Amprolium and ethopabate* is amended in paragraph (d)(1)(iii) in the table in the entry for ''Bacitracin 4 to 50'' in the columns ''Limitations'' and ''Sponsor''by removing ''000004'' and adding in its place ''000004 and 046573''.

Dated: October 30, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–30409 Filed 11–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Chlortetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc. The supplemental NADA provides for changing the withdrawal time to zero following certain uses of chlortetracycline (CTC) in Type C cattle feeds (including free-choice feeds).

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1638.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110–1199, filed supplemental NADA 48–761 that provides for decreasing the withdrawal times for all National Academy of Sciences/National Research Council drug efficacy study implementation (NAS/NRC DESI) approved uses of CTC Type C medicated feeds (including free-choice feeds) for beef and nonlactating dairy cattle and for control of anaplasmosis and other claims to a zero withdrawal time. The supplemental NADA is approved as of September 23, 1997, and the regulations are amended in § 558.128(d)(1) and (d)(2) (21 CFR 558.128(d)(1) and (d)(2)) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Also, in the revision of § 558.128 published in the **Federal Register** of

July 9, 1996 (61 FR 35949), FDA provided for approval of five supplemental NADA's to reflect compliance with the results of the NAS/NRC DESI review of the products and FDA's conclusions based on that study. In that document, FDA failed to reflect that Hoffmann-La Roche is the sponsor of the product codified in § 558.128(d)(2) (see 53 FR 31316, August 18, 1988). The sponsor was the subject of a change of sponsor from American Cyanamid published in the **Federal Register** of April 24, 1996 (61 FR 18081). At this time, the paragraph is amended to reflect the correct sponsor.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of human food safety data and information submitted to support approval of this supplement may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.128 [Amended]

2. Section 558.128 *Chlortetracycline* is amended in the table in paragraph (d)(1) in entry (xi) in the column ''Limitations'' by adding after the existing text the sentence ''For sponsor 000004 zero withdrawal time.'', in entry (xii) for indication 1., in the column ''Limitations'' by adding after the phrase ''for sponsor 048573;'' the phrase ''zero withdrawal for sponsor 000004;'', in entry (xvii) for indication 1., in the column ''Limitations'' by adding after the existing text the sentence ''For sponsor 000004 zero withdrawal time.'', and in paragraph (d)(2) by adding after the number ''(2)'' the phrase ''For sponsor 000004:'' and removing the phrase ''discontinue use 4 days prior to slaughter''.

Dated: November 3, 1997.

Robert C. Livingston,

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

[FR Doc. 97–30405 Filed 11–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 50

[OJP–1078]

RIN 1121–AA37

Young American Medals Program

AGENCY: Office of Justice Programs, Justice.

ACTION: Final rule.

SUMMARY: The United States Department of Justice, Office of Justice Programs (OJP), is publishing this final rule to implement the regulations for the Young American Medals Program as authorized by the Youth Medals Act. The final rule provides an outline of the program and criteria for the awarding of the Young American Medals for Bravery and Service.

DATES: This regulation is effective as of November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Ellen Wesley at (202) 616–3558.

SUPPLEMENTARY INFORMATION: Congress authorized the Department of Justice to promulgate rules and regulations establishing medals under the Youth Medals Act, codified at 42 U.S.C, § 1921, *et seq.* The Act establishes two medals to be awarded under different criteria to persons eighteen years of age or younger at the time of the occurrence. The first, the Young American Medal for Bravery, 42 U.S.C. § 1921, is awarded to a person who has exhibited exceptional courage, extraordinary decisiveness, presence of mind, and unusual swiftness of action, regardless of his or her own personal safety. The second medal, the Young American Medal for Service, 42 U.S.C. § 1922, is awarded to a person who has displayed outstanding character and service.

The final rule sets forth eligibility criteria and application and presentation procedures for the medals. The Young American Medals Committee, part of the Office of the Attorney General, is authorized to issue regulations for the establishment of the two medals, and pursuant to that authority is issuing this final rule.

The interim rule with request for comments was published on September 19, 1996. No comments were received before November 18, 1996, the end of the comment period. Accordingly, the interim rule amending 28 CFR part 50 which was published at 61 FR 49259 on September 19, 1996, is adopted as a final rule without change.

Regulatory Flexibility Act

The Assistant Attorney General, Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. § 605(b)), has reviewed this final rule and, by approving it, certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The Assistant Attorney General, Office of Justice Program determined that the: (1) Final rule provides the outline of a program governing the award of medals to individuals for bravery or service; and (2) the award of such medals imposes no requirements on small businesses or on small entities.

Paperwork Reduction Act

No information requirements are contained in this final rule.

Executive Order 12866

This final rule has been reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The Office of Justice Programs has determined that this Final Rule is not a ''significant regulatory action'' under Executive Order 12866 § 3(f), Regulatory Planning and Review, and accordingly this Final Rule has not been reviewed by OMB.

Executive Order 12612

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

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private section, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were

deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 50

Medals.

PART 50—STATEMENTS OF POLICY

Accordingly, the Interim Rule amending 28 CFR part 50 which was published at 61 FR 49259 on September 19, 1996, is adopted as a final rule without change.

Dated: November 14, 1997.

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 97–30402 Filed 11–18–97; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–97–054]

RIN 2115–AE46

Special Local Regulations: City of Pompano Annual Christmas Boat Parade, Pompano Beach, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the City of Pompano Annual Christmas Boat Parade. This event will be held Sunday, December 14, 1997, between 5 p.m. and 10 p.m. Eastern Standard Time (EST). There will be approximately 150 participants and 75 spectator craft. The resulting congestion of navigable channels creates an extra or unusual hazard in the navigable waters. These regulations are necessary to provide for the safety of life of navigable waters during the event.

DATES: These regulations become effective on December 14, 1997, from 5 p.m. to 10 p.m. EST.

FOR FURTHER INFORMATION CONTACT: LTJG J. Delgado, Coast Guard Group Miami, FL at (305) 535–4409.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The City of Pompano Annual Christmas Boat Parade is a nighttime parade of approximately 150 pleasure and fishing boats ranging in length from 23 feet to 125 feet decorated with holiday lights. There will be approximately 75 spectator craft. The parade will form in the staging area at Lake Santa Barbara then proceed north up the Intracoastal Waterway (ICW) to the Hillsboro Boulevard Bridge where the parade will disband.

The regulated area will include the Intracoastal Waterway from Pompano Beach daybeacon 74 LLNR 47230 to State Road 810 Bridge (ICW mile marker 1050). While the parade is transiting, these regulations will prohibit nonparticipating vessels from approaching within 500 feet ahead of the lead vessel in the parade to 500 feet astern of the last participating vessel in the parade to within 50 feet on either side of the parade unless authorized by the patrol commander. After the passage of the parade participants, all vessels will be allowed to resume normal operations.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public, as the Coast Guard was only given notice of the date of the parade less than five weeks before the event.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only five hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C 605(b) that this rule would not have a significant economic impact on a substantial number of small entities as the regulations would only be in effect for approximately five hours in a limited area of the intracoastal waterway.

Collection of Information

These proposed regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2 of Commandant Instruction M16475.1B. In accordance with that section, this proposed action has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact have been prepared and are available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations: In consideration of the foregoing, the Coast Guard amends part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46 and 33 CFR 100.35.

2. A new temporary section 100.35T–07–054 is added to read as follows:

§ 100.35T–07–054 City of Pompano Annual Christmas Boat Parade, Pompano Beach Florida

(a) *Regulated Area.* The regulated area is established surrounding the parade participants as they transit the parade route. Nonparticipant vessels will be prohibited from entering an area encompassing 50 feet on either side of the north-south axis of the parade. The axis extends from 500 feet ahead of the lead vessel in the parade to 500 feet astern of the last participating vessel in the parade as the parade transit north in the Intracoastal Waterway (ICW) from Lake Santa Barbara, the staging area of the parade, to the Hillsboro Boulevard Bridge, where the parade will disband. The regulated area will include the Intracoastal Waterway from Pompano Beach daybeacon 74 LLNR 47230 to State Road 810 bridge (ICW mile marker 1050).

(b) *Special Local Regulations.*

(1) While the parade is transiting, nonparticipating vessels are prohibited from approaching within 500 feet ahead of the lead vessel in the parade to 500 feet astern of the last participating vessel in the parade to within 50 feet on either side of the parade unless authorized by the Patrol Commander. Anchoring in the viewing area is prohibited unless authorized by the Patrol Commander. Entry or anchoring in the staging area is prohibited, unless authorized by the Patrol Commander. After the passage of the parade participants, all vessels may resume normal operations.

(2) A succession of not fewer than five short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Dates.* These regulations become effective on December 14, 1997, from 5 p.m. to 10 p.m. EST.

Dated: November 6, 1997.

Norman T. Saunders,

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

[FR Doc. 97–30291 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach, CA; 97–007]

RIN 2115–AA97

Safety Zone: Los Angeles Harbor-San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is revising the two safety zones associated with the dredging and landfill activities for stage II of the Pier 400 project. The Coast Guard is also adding a new moving safety zone surrounding the Dredge FLORIDA when it is in the waters of Los Angeles Harbor and San Pedro Bay, CA, and engaged in dredging operations associated with the Pier 400 project.

DATES: This regulation will be in effect from 6 a.m. PDT on July 22, 1997 until 11:59 p.m. PST on December 31, 1999. Comments must be received on or before January 20, 1998.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 165 N. Pico Avenue, Long Beach, CA 90802. Comments received will be available for inspection and copying within the Port Safety Division at Marine Safety Office Los Angeles-Long Beach. Normal office hours are 8 a.m. to 4 p.m., PDT, Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Keith Whiteman, Chief, Port Safety and Security Division, Marine Safety Office Los Angeles-Long Beach.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures could not be done in a timely fashion in that the sequence of construction activities, location of work, selection of a contractor, and the issuance of a notice to proceed for Stage II of the Pier 400 project were not finalized until a date fewer than 30 days prior to the anticipated start of work.

Although this regulation is published as an interim rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **ADDRESSES** in this preamble. Those providing comments should identify the docket number (COTP Los Angeles-Long Beach, CA; 97–007) for the regulation and also include their name, address, and reason(s) for each comment presented. persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. Based upon the comments received, the scope of the regulation may be changed.

The Coast Guard plans no public meetings. Persons may request a public meeting by writing to Marine Safety Office Los Angeles-Long Beach at the address listed under **ADDRESSES** in this preamble.

Background and Purpose

Construction associated with the Pier 400 project referenced in 33 CFR part 165.1110 has progressed to stage II. Consequently, the dredging and landfill activities necessary to complete the project have been expanded, and the existing safety zones no longer provide an appropriate level of safety. This rule expands those safety zones, and adds a new, moving safety zone surrounding the Dredge FLORIDA whenever it is engaged in dredging activities associated with the Pier 400 project.

The Dredge FLORIDA was not utilized during stage I of the Pier 400 project. Consequently, the moving safety zone surrounding the Dredge FLORIDA was not necessary during stage I of the Pier 400 project, but it is now essential given the expanded scope of stage II of the Pier 400 project.

This regulation is needed to restrict vessel traffic in the regulated areas to prevent collisions, groundings, or other navigational mishaps. Entry into, transit through, or anchoring within any of the safety zones is prohibited unless authorized by the Captain of the Port Los Angeles-Long Beach, CA.

Discussion of Regulation

This rulemaking accomplishes three things with respect to the Pier 400 project. It expands the two existing safety zones referenced in 33 CFR part 165.1110, and it adds a third, moving safety zone surrounding the Dredge FLORIDA. This rulemaking is necessary because the construction activities associated with the Pier 400 project have progressed from stage I to stage II. Consequently, the geographic scope of the construction area is now larger, and the services of the Dredge FLORIDA must now be employed.

These safety zones are necessary to safeguard recreational and commercial

vessels from the dangers of the dredging and landfill activities in the project area and to prevent interference with vessels engaged in these operations. All persons and vessels are prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port Los Angeles-Long Beach, CA.

Regulatory Assessment

This interim rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary. Only minor delays to mariners are foreseen as vessel traffic can be directed around the area of the safety zones.

Collection of Information

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

Federalism

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

Environmental Assessment

The Coast Guard considered the environmental impact of this regulation and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This regulation is expected to have no significant effect on the environment. A Categorical Exclusion Determination and Environmental Analysis Checklist is available for inspection and copying in the docket to be maintained at the address under **ADDRESSES** in this preamble.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.1110 is revised to read as follows:

§ 165.1110 Safety Zone: Los Angeles Harbor—San Pedro Bay, CA.

(a) *Location*. All waters within the following boundaries are established as safety zones:

(1) Pier 400: Those waters of Los Angeles Harbor and San Pedro Bay in the vicinity of Pier 400 as defined by the lines connecting the following coordinates:

Latitude	*Longitude*
33°–44′–29.06″ N	118°–14′–17.25″ W; thence to
33°–43′–48.06″ N	118°–13′–59.25″ W; thence to
33°–43′–48.50″ N	118°–14′–11.72″ W; thence to
33°–42′–46.17″ N	118°–15′–04.78″ W; thence to
33°–43′–00.00″ N	118°–15′–29.90″ W; thence to
33°–43′–21.94″ N	118°–15′–41.51″ W; thence to
33°–43′–45.04″ N	118°–15′–30.81″ W; thence to
33°–43′–58.55″ N	118°–14′–44.38″ W; thence to
33°–44′–03.70″ N	118°–14′–26.65″ W.

and thence to the point of origin. All coordinates referred use Datum: NAD 83.

(2) Shallow Water Habitat: Those waters of Los Angeles Harbor and San Pedro Bay as defined by the lines connecting the following coordinates.

Latitude	*Longitude*
33°–42′–32.10″ N	118°–15′–00.00″ W; thence to
33°–42′–49.84″ N	118°–15′–41.51″ W; thence to
33°–42′–47.06″ N	118°–15′–58.26″ W; thence to
33°–42′–24.99″ N	118°–15′–23.59″ W.

and thence to the point of origin. All coordinate referred use Datum: NAD 83.

(3) Moving Safety Zone: Dredge FLORIDA. All waters within 50 yards on all sides of the Dredge FLORIDA when it is in the waters of Los Angeles Harbor and San Pedro Bay, CA, and engaged in dredging operations associated with the Pier 400 project.

(b) *Effective Date*. This section is effective from 6 A.M. PDT on July 22, 1997 until 11:59 P.M. PST on December 31, 1999, unless canceled earlier by the Captain of the Port.

(c) Regulations. In accordance with the general regulations in § 165.23 of the part, entry into, transit through, or anchoring within any of these safety zones is prohibited unless authorized by the Captain of the Port Los Angeles-Long Beach, CA.

Dated: July 21, 1997.

G.F. Wright,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach, California.

[FR Doc. 97–30292 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 4

RIN 1024–AC63

Safety Belt Use Within the NPS System

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is amending its regulations concerning seatbelt use within units of the NPS. Currently, the NPS has regulations requiring seatbelt use by the operator and each front seat passenger. On April 16, 1997, President Clinton signed Executive Order 13043 directing NPS and other Federal agencies to promulgate regulations that require all occupants of motor vehicles to use safety belts or child restraint devices at all times within units of the NPS when the vehicle is in motion.

EFFECTIVE DATE: This rule becomes effective on December 19, 1997.

FOR FURTHER INFORMATION CONTACT: Dennis Burnett, Ranger Activities Division, National Park Service, at (202) 208–4874.

SUPPLEMENTARY INFORMATION:

Background

NPS administers 375 areas throughout the country under the statutory mandate to conserve the scenery, the natural and cultural objects and the wildlife therein; and to provide for their enjoyment in such manner as will leave them unimpaired for the enjoyment of future generations. Although the nearly 300 million annual visitors to the National Park System use a variety of access methods, the vast majority rely on motor vehicles and roadways to reach park areas and to circulate within them.

Consequently, NPS is involved in road construction and maintenance, traffic safety and traffic law enforcement.

NPS currently administers over 8,000 miles of roads within the National Park System that are open to the public. These 8,000 miles compare in magnitude to the State of Arizona's state road system, except that they are scattered throughout the United States and its territories. There is great variety in the nature and extent of park roads, ranging from very short lengths of unpaved secondary roadways, to well-developed road systems complete with spur roads, parking areas and overlooks, to parkways running for hundreds of miles through several States, to parkways used primarily as commuter routes in the Washington, DC area. In addition, many park areas contain State and/or county highways and roads over which the NPS may exercise varying degrees of jurisdiction.

On December 13, 1989, the NPS promulgated a final rule (36 CFR 4.15) concerning the use of safety belts (54 FR 51199). That rule requires the operator of a motor vehicle and each front seat passenger to wear a safety belt at all times when the vehicle is in motion, unless (1) the vehicle was not originally equipped by the manufacturer with a safety belt or (2) the operator or front seat passenger has a medical condition that prevents the use of a safety belt. The regulation is applicable in park areas located within States that do not have a mandatory seatbelt law in effect and can be enforced only when another traffic violation had occurred. The regulation is implemented primarily through signing, text in brochures and incidental public contact.

Executive Order 13043, signed by President Clinton on April 16, 1997 (62 FR 19217, April 18, 1997), directed NPS to propose rules and take other appropriate measures to further the use of safety belts in the national parks. This initiative includes, but is not limited to, conducting education, awareness and other appropriate programs about the importance of wearing safety belts and the consequences of not wearing them. In addition, NPS was directed to consider implementing regulations to enhance safety belt use requirements and begin primary enforcement of such requirements in park areas. The order also required NPS to consider publicizing and actively enforcing such regulations. Under the final rule as adopted after consideration of public comment, each operator and passenger occupying any seating position of a motor vehicle in a park area, whose seat is equipped with a seatbelt or child restraint system, shall have the seatbelt or child restraint system properly fastened at all times when the vehicle is in motion. Primary enforcement means that a motor vehicle may be stopped and seatbelt regulations enforced when the operator or any occupant is not wearing their seatbelt. The rule would not require another traffic violation to occur before the vehicle may be stopped. The seatbelt regulation in this rulemaking is intended to apply in all NPS areas.

The President, the Department of the Interior and NPS strongly support the use of appropriate restraint systems by all motor vehicle occupants and view the potential reduction in personal injuries and fatalities that may result from the promulgation of this regulation as highly desirable. The benefits of wearing seatbelts have been documented extensively.

Summary of Comments

During the public review period for the proposed regulation (62 FR 40317, July 28, 1997), two written comments were received. Both commenters supported the regulation from a safety perspective, but had other concerns about the proposed rule.

One commenter, who operates a tour bus equipped with seatbelts, was concerned about the difficulty in getting passengers to buckle-up and whether the driver would be responsible, and therefore liable, if passengers do not buckle-up.

NPS believes that the responsibility of the bus driver is to announce to all passengers that the use of seatbelts is required whenever the bus is in motion. After that, it is the responsibility of each passenger, and not the driver, to ensure that they keep their seatbelts fastened. NPS does not intend this rule to be overly cumbersome, but rather to encourage the use of seatbelts.

The other commenter had several points to address. First, the commenter was concerned about the penalty for not using a seatbelt. Under Title 36 of the Code of Federal Regulations (36 CFR), § 1.3, penalties for ''all'' violations of 36 CFR shall be punished as provided by law, which means a fine up to $5,000, or by imprisonment not exceeding 6 months, or both. This maximum penalty is in accordance with the Criminal Fine Improvements Act of 1987 (18 U.S.C. 3571). However, every unit of the NPS is located within a U.S. Judicial District that has established fines for seatbelt and child restraint regulations for that specific District. These fines range from $10 to $100 Servicewide, depending on the Judicial District in which the park is located. The most common fine is $50. These fines will not change with the new regulation.

Second, the commenter was concerned that the seatbelt rule would create confusion and a new layer of regulation in those States where there is already a seatbelt rule in effect. The commenter requested that the NPS post this new regulation at the entrance to all park areas. NPS agrees with the comment that prior notice is best course of action to ensure compliance with this regulation. NPS will therefore encourage all park areas to post, or otherwise make this information readily available to this visiting public. The commenter's concerns about the additional layer of regulations is understandable, but E.O. 13043 is clear that the rule apply to all occupants of motor vehicles in motion in all NPS units.

Drafting information: The primary author of this rule is Dennis Burnett, Ranger Activities Division, National Park Service, Washington, D.C. 20240.

Paperwork Reduction Act

This rulemaking does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The economic effects of this rulemaking are negligible.

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

The Department has determined that this rule meets the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 8–4(2)).

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which compromise the nature and

characteristics of the area or cause physical damage to it;

(c) Conflict with adjacent ownership or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 4

National parks, Traffic regulations.

In consideration of the foregoing, 36 CFR chapter I is amended as follows:

PART 4—VEHICLES AND TRAFFIC SAFETY

1. The authority citation for Part 4 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. Section 4.15 is revised to read as follows:

§ 4.15 Safety belts.

(a) Each operator and passenger occupying any seating position of a motor vehicle in a park area will have the safety belt or child restraint system properly fastened at all times when the vehicle is in motion. The safety belt and child restraint system will conform to applicable United States Department of Transportation standards.

(b) This section does not apply to an occupant in a seat that was not originally equipped by the manufacturer with a safety belt nor does it apply to a person who can demonstrate that a medical condition prevents restraint by a safety belt or other occupant restraining device.

Dated: November 6, 1997.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–30135 Filed 11–18–97; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–33–1–7357; FRL–5924–6]

Approval and Promulgation of State Implementation Plans (SIP) for Louisiana: Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final disapproval.

SUMMARY: This EPA rulemaking addresses comments received in response to the proposed disapproval of the SIP revision submitted by Louisiana for establishing and operating a motor vehicle Inspection and Maintenance (I/M) Program, and finalizes disapproval of the plan. An enhanced I/M program is required in the Baton Rouge serious ozone nonattainment area under the Clean Air Act (the Act) as amended in 1990. The State lacks the legal authority to establish and operate an I/M program in the ozone nonattainment area. This action is being taken under section 110 of the Act.

DATES: This final rule is effective December 19, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Louisiana Department of Environmental Quality, Air Quality Compliance Division, 7290 Bluebonnet, 2nd Floor, Baton Rouge, Louisiana. Louisiana Department of Environmental Quality Capital Regional Office, 11720 Airline Highway, Baton Rouge, Louisiana.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7367.

SUPPLEMENTARY INFORMATION:

I. Background

On July 31, 1997 (62 FR 41002), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Louisiana. The NPR withdrew the previous conditional approval proposed June 9, 1997 (62 FR 31388), and proposed disapproval of the State's I/M program SIP submitted to satisfy requirements of section 182(c)(3) of the Act concerning serious ozone nonattainment areas.

The proposed conditional approval was withdrawn and disapproval proposed because the State Legislature did not reauthorize and provide continuous authorization for an I/M program during the 1997 Regular Legislative Session. Bills to reauthorize the I/M program for two more years, and to fund the program, were introduced, but neither was enacted. The I/M program start date, as stated in the SIP, is January 1, 1999. Program reauthorization was needed to develop the program in time to meet the January 1999 start date. Continuous program authorization is needed to satisfy I/M Rule 40 CFR 51.372 that requires states to provide legal authority for the I/M program until such time as it is no longer necessary. Legal authority in the revised Louisiana SIP is limited to reauthorization by the State Legislature in odd-numbered years starting in 1997. The EPA considered this a major deficiency in the SIP.

Other specific requirements of the Louisiana I/M SIP and the rationale for EPA's proposed action are explained in the NPRs and will not be restated here.

II. Public Comments/Response to Comments

This section discusses the content of the comments submitted to the docket during the Federal comment period for the notice of proposed rulemaking published in the July 31, 1997, **Federal Register** (FR), and provides EPA's response to those comments. The comment period closed September 2, 1997. One comment was received by the Region. The comment was from the Louisiana Department of Environmental Quality (LDEQ).

Comment—Transportation Conformity Rule

The LDEQ commented that the inclusion of transportation conformity sanctions in the proposed rulemaking is an error. The stated sanctions were in the form of a Transportation Improvement Plan lapse or freeze following final disapproval. The transportation conformity rule (58 FR 62216, November 24, 1993), clearly defines control strategy implementation plan. The Louisiana I/M SIP is not a control strategy implementation plan. Therefore, the State's I/M SIP should not include transportation conformity sanctions.

Response to Comment

The EPA agrees with LDEQ's comment adding the following explanation: When the previous NPR was being developed, and at the time of its publication, the transportation conformity rule was undergoing revision. The Region chose to include transportation conformity sanctions at that time as a precautionary measure, pending the publication of the revised transportation conformity rule. Subsequently, the revised transportation conformity rule was published (August 15, 1997, 62 FR 43779). Since the I/M

program is not part of Louisiana's 15% Rate-of-Progress Plan or its Post-1996 Rate of Progress/ Attainment Demonstration Plan, it is not considered a control strategy under the definition in the transportation conformity rule. The EPA agrees that the transportation conformity sanctions stated in the proposed disapproval notice do not apply to Louisiana in this case.

III. Final Rulemaking

The EPA is finalizing disapproval of the Louisiana I/M SIP under sections 110(k)(3) and 182 of the Act. During the last regular session ending June 23, 1997, the State Legislature did not provide either program reauthorization or continuous program authority for the I/M program as required in the Federal I/M Rule. The Legislature is not scheduled to meet in regular session until the Spring of 1999, which is after the January 1, 1999, start date designated in the SIP.

Under section 179(a)(2), if the EPA Administrator takes final disapproval action on a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, and the deficiency is not corrected within 18 months of the effective date of the final disapproval action, the Administrator must apply one of the sanctions set forth in section 179(b) of the Act. Section 179(b) provides two sanctions: Imposition of 2:1 emission offset requirements and revocation of highway funding. If the Administrator imposes the first requirement of 2:1 offsets and the deficiency is not corrected within six months, then the second sanction pertaining to highway funding shall apply. The sanctions shall apply until the Administrator determines that the State has corrected the legislative deficiency, and EPA has issued final approval. This sanctions process is set forth in 40 CFR 52.31. Today's action constitutes final agency action and will be effective 30 days after publication. The 18-month sanction clock time frame for the State to correct the deficiency begins upon the effective date of this final disapproval action. This disapproval initiates the sanctions process of 179(a) of the Act.

Nothing in today's 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 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

The Office of Management and Budget has exempted this regulatory action from Executive Order 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. See 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.

The EPA's final disapproval of the State request under sections 110 and 301, and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any preexisting Federal requirements remain in place after this final disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, the EPA certifies that this final 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 impose any new Federal requirements.

C. Small Business Regulatory Enforcement Fairness Act

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended 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. 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 section 804(2) of the APA as amended.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandate Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in 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 by the rule.

The EPA has determined that the final disapproval action 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 does not impose new requirements. Accordingly, no additional costs to State, local, or tribal governments, or private sector, result from this action.

E. Petitions for Judicial Review

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 20, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone.

Dated: November 6, 1997.

Lynda F. Carroll,

Acting 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 T—Louisiana

2. Section 52.994 is added to read as follows:

§ 52.994 Disapprovals.

The State of Louisiana motor vehicle Inspection and Maintenance (I/M) program SIP submittal of August 18, 1995, with later editions, is disapproved based on the failure of the State Legislature to grant legal authority to reauthorize and continuously operate the program until the program is no

longer necessary. The Baton Rouge serious ozone nonattainment area is required to have an enhanced I/M program under section 182 of the Clean Air Act (the Act) as amended in 1990. This disapproval initiates the sanction process of section 179(a) of the Act.

[FR Doc. 97–30376 Filed 11–18–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300557; FRL–5746–1]

Methyl Salicylate; Establishment of an Exemption from Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the insecticide methyl salicylate in or on food, when used as an insect repellent in food packaging and animal feed packaging at an application rate that does not exceed 0.2 mg of methyl salicylate per square inch of packaging materials.

EFFECTIVE DATE: NOVEMBER 19, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300557/PP 7F4818], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number [OPP–300557] and submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300557]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Sheryl K. Reilly, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location and telephone number: Room CS15-W31, 2800 Jefferson Davis Hwy., Arlington, VA, (703/308-8265); e-mail: reilly.sheryl@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Tenneco Packaging, 1603 Orrington Ave., Evanston, IL, 60201, requested in pesticide petition PP 7F4818 the establishment of an exemption from the requirement of a tolerance for residues of the insecticide methyl salicylate on food, when used as a insect repellent in food packaging and animal feed packaging materials alone or in conjunction with inert components which conform to the requirements of regulations issued by the Food and Drug Administration under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA). A notice of filing (FRL–5721–6) was published in the **Federal Register** (62 FR 32331) on June 13, 1997, and the notice announced that the comment period would end on July 13, 1997; no comments were received.

The data submitted in the petition and all other relevant material have been evaluated. Following is a summary of EPA's findings regarding this petition as required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act.

I. Risk Assessment and Statutory Findings

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe''. Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water an in residential settings, but does not include occupational exposure. Section 408(c)(2)(B) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue... .'' EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

II. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Additionally, section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Methyl salicylate (CAS Registry Number 119–36–8) is the primary chemical component of a naturally occurring fragrant oil, oil of wintergreen. If present at all, residues of methyl salicylate that may be found in foods in contact with treated packaging materials is expected to be minimal and considerably below the levels expected in existing GRAS uses of the active ingredient as a direct food flavoring ingredient.

The toxicity of methyl salicylate has been extensively studied in animal bioassays of acute, subchronic, and chronic duration. Studies include assessments of the mutagenicity, developmental toxicity, and reproductive effects of methyl salicylate. The petitioner submitted data from the scientific literature to support all toxicology studies typically required for registration of biochemical pesticides.

1. *Acute toxicity* . The acute oral LD_{50} for methyl salicylate in the rat ranges

from 887-1,250 mg/kg. Acute dermal toxicity (LD_{50}) has been reported to be > 5 g/kg in the rabbit.

2. *Skin and eye irritation*. Methyl salicylate has been reported to be a severe eye irritant. Methyl salicylate has been reported to produce mild dermal irritation in rabbits at a concentration of 1%. Moderate to severe irritation is produced in rabbits and guinea pigs at concentrations above 1%. Applied full strength to intact or abraded rabbit skin for 24 hours under occlusion, methyl salicylate was moderately irritating. However, tested at 8% in petrolatum, it produced no irritation after a 48 hour closed-patch test on human subjects.

3. *Mutagenicity*. No evidence for genotoxicity was observed in two studies with prokaryotic test systems; no data on genotoxicity in mammalian test systems are available.

4. *Subchronic toxicity*. Studies of subchronic duration with administration by the oral route have been conducted in both rats and dogs. In rats, no adverse effects were seen at a dose of 50 mg/kg/day in the diet. In dogs, doses ≤250 mg/kg/day did not result in any adverse effects, however, the liver appeared to be the target organ of toxicity at doses above this level. No toxicity was observed when rats were exposed to methyl salicylate via inhalation of saturated air (approx. 700 mg/m3) after twenty 7-hour exposures.

5. *Developmental toxicity*. Methyl salicylate has been tested for developmental effects in hamsters, rats and mice by the oral and dermal routes. In hamsters, oral or dermal doses of methyl salicylate at doses of 1,750 mg/kg/day induced maternal toxicity and increased the incidence of neural tube defects. In rats given methyl salicylate at up to 6,000 mg/kg/day in petroleum based grease by the dermal route, no developmental effects were observed. However, undiluted methyl salicylate applied to the skin of pregnant rats caused total litter resorptions at 1,000 mg/kg/day (a dose that was reduced from 2,000 mg/kg/day because of excessive maternal toxicity). The results of a continuous breeding study in mice were consistent with findings in the developmental studies because of the decreased numbers of litters per pair, reduced average number of pups per litter, decreased proportion of pups born alive in each litter, and reduced mean pup weights in mice given 500 mg/kg/day. The no-observed-adverse-effect level (NOAEL) for these effects was 250 mg/kg/day.

6. *Chronic toxicity*. Toxicity resulting from chronic exposure has been evaluated in studies of two-years' duration as well as studies initially intended to evaluate multi-generational reproductive and developmental effects. In mice, the NOAEL for reproductive parameters and the other toxic endpoints examined has been reported as 250 mg/kg/day. When rats were exposed to methyl salicylate in the diet for two years, no adverse effects were noted at levels of 0.1% (approx. 50 mg/kg/day); pituitary lesions were increased in animals exposed to 0.5% (approx. 250 mg/kg/day). In dogs orally exposed to methyl salicylate for two years, no adverse effects were observed at 50 mg/kg/day; the LOAEL (liver effects) was reported as 150 mg/kg/day.

7. *Carcinogenicity*. No studies have been performed with the primary purpose of determining the oncogenicity of methyl salicylate; however, chronic exposure studies with two-year exposure durations that included extensive pathology did not indicate any increases in incidences of benign or malignant tumors.

8. *Toxicology data waivers*. Waivers for acute inhalation toxicity, dermal sensitization, and immune response studies were accepted by the Agency, based on the long history of use of methyl salicylate by humans without any indication of deleterious effects. Besides its use as a flavoring agent in foods (see GRAS Assessment, below), methyl salicylate has been used in mouthwash, suntan lotions, and in U.S. Pharmocopeia (U.S.P.) preparations as a counterirritant and analgesic for painful muscles or joints, in liniments, ointments, and other preparations. In addition, the manufacturing use product is a liquid, which is not expected to result in the release of appreciable quantities of inhalable methyl salicylate during the manufacturing process, and worker exposure via the dermal route will be minimized through the use of rubber gloves and splash proof goggles and/or face shields. In the end-use formulation, methyl salicylate will be incorporated into a solid matrix in the packaging materials, and the release of vapors at a very low rate over extended periods of time will not result in significant worker or consumer dermal and inhalation exposure.

9. *GRAS assessment*. The Flavoring Extract Manufacturer's Association (FEMA) has determined GRAS levels of methyl salicylate and oil of wintergreen in foods and beverages as indicated in the table below.

TABLE 1- FEMA GRAS LEVELS IN FOOD (PPM)

Food	Methyl Salicylate	Oil of Wintergreen
Beverages	59	56
Ice cream	27	44
Candy	840	260
Baked goods	54	1,500
Chewing gum	8,400	3,900
Syrups	200	---

GRAS food levels in Table 1 are above both the maximum food residue concentration (approx. 16 ppm) and the maximum dietary exposure concentration (approx. 4.7 ppm) estimated by the Petitioner for the proposed use pattern for methyl salicylate. These estimates used highly conservative assumptions for migration of methyl salicylate from packaging and food consumption. Petitioner has shown that even under worst-case exposure conditions (i.e., assuming 30% of all food consumed is in contact with packaging containing methyl salicylate, and 100% of the methyl salicylate migrates to food) exposure to methyl salicylate from use in packaging materials would be less than that received by chewing one stick of chewing gum at the GRAS-approved level. Residue data requirements were thus waived by the Agency.

III. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from groundwater or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

There is no established Maximum Contaminant Level (MCL) for residues of methyl salicylate in drinking water under the Safe Drinking Water Act.

There are five currently registered pesticide products that contain methyl salicylate as an active ingredient. These products include impregnated materials and pellets to be used as vertebrate repellents, and disinfectants/germicides registered for use in household, institutional, hospital, and eating establishment premises. In addition, methyl salicylate has many non-pesticidal uses, such as liniments, lotions, and other products listed above.

With regard to dietary exposure, as noted above in Table 1, methyl salicylate is used as a flavoring in many food products.

Aggregate exposure to methyl salicylate from all these sources is difficult to determine, largely because of its use in a wide variety of food products. While it is difficult to develop a precise estimate of total human exposure to methyl salicylate, EPA believes that its history of safe use as a flavoring additive and its low toxicity at relatively high doses indicate that current exposures are likely to be significantly below levels that may result in adverse health effects. The likely dietary exposures from the pesticidal use in food packaging would be indirect (i.e., resulting from food contact with a treated surface) and therefore unlikely to add significantly to existing exposures. However, because studies evaluated by the Agency indicate that methyl salicylate is toxic to humans at certain high levels, EPA believes it is appropriate to place some limitation on the amount of methyl salicylate that may be applied to packaging material for the purposes of repelling insects to ensure that large quantities of the substance are not used in food packaging. The limitation of 0.2 mg per square inch of packaging materials established by this regulation is based on the lowest GRAS level (27 ppm for ice cream) and a worst-case scenario, which assumes 100% transfer of the active ingredient from the packaging material to food contained within, without consideration of the physical and chemical barriers between the chemical and the food. Using the lowest GRAS level is a conservative step that ties the potential exposure to what is already likely to be in the food supply. The limit, therefore, ensures that any increased human exposure resulting from the pesticidal use of methyl salicylate in packaging material would add very little to the existing exposures -- exposures which EPA believes to be safe. Therefore, EPA concludes that there is a reasonable certainty of no harm from aggregate dietary exposure under this exemption.

A. Dietary Exposure

Dietary exposure of methyl salicylate via food or water is difficult to estimate due to the use of methyl salicylate as a flavoring in many food products. However, based upon its long history of safe use as an additive in food and beverages and its low toxicity at relatively high doses, the Agency believes that current dietary exposure is likely to be significantly below levels that may cause adverse health effects. The likely dietary exposures from the registered products would be indirect (i.e., resulting from food contact with a treated surface) and therefore add very little to existing exposures. Therefore, EPA concludes that there is a reasonable certainty of no harm from aggregate dietary exposure under this exemption.

B. Non-dietary, Non-occupational Exposure

There are five currently registered pesticide products that contain methyl salicylate as an active ingredient. These products include impregnated materials and pellets to be used as vertebrate repellents, and disinfectants/germicides registered for use in household, institutional, hospital, and eating establishment premises. In addition, methyl salicylate is already widely used in liniments, lotions, and other products listed above. The Agency considers the toxicology data base available to support non-pesticidal uses and exposures adequate to support a conclusion of insignificant increase in non-dietary, non-occupational exposure and toxicity from the pesticidal use in food and feed packaging materials.

IV. Cumulative Exposure

The Agency has considered the potential for cumulative toxicity effects of pesticidal uses of methyl salicylate and other substances that may have a common mechanism of toxicity. The Agency concluded that consideration of a common mechanism of toxicity is not appropriate because there is no information in the publicly available literature that indicates there are other substances that share a common mechanism of toxicity with methyl salicylate. Thus, only the potential risks of methyl salicylate were considered in this exemption from the requirement of a tolerance.

V. Safety Factors

A. U.S. Population

Methyl salicylate is the major component of a naturally occurring fragrant oil. FEMA has listed methyl salicylate on its GRAS list for use as a flavoring ingredient in foods and beverages. An FDA Advisory Review Panel has concluded that methyl salicylate is safe for use up to a concentration of 0.4% in the form of a rinse or mouthwash. The compound is extensively used in foods, beverages, pharmaceuticals, lotions and perfumes and has wide distribution in commerce with no reports of adverse outcomes associated with intended uses. The toxicity of methyl salicylate has been adequately and reliably characterized; it is summarized in this submission.

Based on this information, EPA concludes that there is reasonable certainty of no harm from aggregate exposures to pesticidal uses of methyl salicylate over a lifetime, and that no significant human health risks will result from such exposures.

B. Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through the use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

Due to the low expected toxicity of this compound, EPA has not used a safety factor analysis in assessing the risk of these compounds. For the same reasons the additional safety factor is unnecessary.

VI. Determination of Safety for U.S. Population, Infants and Children

Based on its long history of use by humans without any indication of deleterious effects, there is reasonable certainty that no harm will result from aggregate exposure to the United States population, including infants and children, to residues of methyl salicylate. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. As a result, EPA establishes an exemption from the requirement of a tolerance pursuant to FFDCA section 408(j)(3) for methyl salicylate, on the condition that Methyl salicylate be used in accordance with the following provisions:

Tenneco Packaging must immediately notify the EPA of any findings that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This exemption from the requirement of a tolerance may be revoked if any experience with or scientific data on this pesticide indicate that the tolerance is not safe.

VII. Other Considerations

A. Endocrine Disrupters

Methyl salicylate has been studied in several tests of reproductive and developmental effects, including multigenerational studies. In addition,

the pathology of endocrine-sensitive tissues and organs has been evaluated following repeated (i.e., subchronic) and long-term (i.e., chronic) exposures. No such effects were reported in any of these studies. The Agency has no information to suggest that methyl salicylate will have an effect on the immune and endocrine systems. The Agency is not requiring information on the endocrine effects of this biochemical pesticide at this time; Congress has allowed 3 years after August 3, 1996, for the Agency to implement a screening program with respect to endocrine effects.

B. Analytical Method

The Agency proposes to establish an exemption from the requirement of a tolerance with a numerical limitation. Therefore, for enforcement purposes, quantitative analysis of the active ingredient methyl salicylate may be performed by a gas chromatographic method using flame ionization detection as described by the Association of Official Analytical Chemists (Method 969.13, AOAC Official Methods of Analysis, 1990, pages 754–755).

VIII. Codex Maximum Residue Level

No known maximum residue limits (MRLs) have been established for methyl salicylate by the Codex Alimentarius Commission.

IX. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance exemption regulation issued by EPA under new section 408(e) as was provided in the old section 408. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person adversely affected by this regulation may, January 20, 1998, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25) Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

X. Public Docket

A record has been established for this rulemaking under the docket number [OPP–300557]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

XI. Regulatory Assessment Requirements

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

This action does not impose any enforceable duty or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because tolerances established on the basis of a petition under section 408(d) of FFDCA do not require issuance of a proposed rule, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a), do not apply. Prior to the recent amendment of the FFDCA, EPA had treated such rulemakings as subject to the RFA; however, the amendments to the FFDCA clarify that no proposal is required for such rulemakings and hence that the RFA is inapplicable. Nonetheless, the Agency has previously assessed whether establishing tolerances or exemptions from tolerance, raising tolerance levels, or expanding exemptions adversely impact small entities and concluded, as a generic matter, that there is no adverse impact. (46 FR 24950) (May 4, 1981).

XII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), 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 in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(a).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests, Reporting and record keeping requirements.

Dated: November 5, 1997.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1189 is added to read as follows:

§ 180.1189 Methyl salicylate; exemption from the requirement of a tolerance.

The biochemical pesticide methyl salicylate is exempt from the requirement of a tolerance for residues in or on food or feed when used as an insect repellent in food packaging and animal feed packaging at an application rate that does not exceed 0.2 mg of methyl salicylate per square inch of packaging materials.

[FR Doc. 97–30251 Filed 11–18–97; 8:45am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300571; FRL–5752–8]

RIN 2070–AB78

Fomesafen; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of fomesafen in or on dry beans. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on dry beans. This regulation establishes a maximum permissible level for residues of fomesafen in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on October 31, 1998.

DATES: This regulation is effective November 19, 1997. Objections and requests for hearings must be received by EPA on or before January 20, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300571], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300571], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300571]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9356, e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the herbicide fomesafen, in or on dry beans at 0.05 part per million (ppm). This tolerance will expire and is revoked on October 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq*., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Fomesafen on Dry Beans and FFDCA Tolerances

Requests were received from a number of states for use of fomesafen on dry beans for control of broadleaf weeds. The Applicants state that since the loss of the herbicides dinoseb and chloramben, weed contamination in U.S. bean fields has increased and significant crop losses have occurred. The Applicants state that available alternative pesticides and control techniques have produced unreliable results, and that without this use of fomesafen, significant economic losses will occur. EPA has authorized under FIFRA section 18 the use of fomesafen on dry beans for control of broadleaf weeds in Maine, Michigan, and New York. After having reviewed the submission, EPA concurs that emergency conditions exist for these states.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of fomesafen in or on dry beans. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on October 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on dry beans after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether fomesafen meets EPA's registration requirements for use on dry beans or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of fomesafen by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Maine, Michigan, and New York to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for fomesafen, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effectlevel'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute,'' ''short-term,'' ''intermediate term,'' and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end

residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (Non-Nursing Infants <1 Year Old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of fomesafen and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of fomesafen on dry beans at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fomesafen are discussed below.

1. *Acute toxicity*. EPA has selected the developmental NOEL of 7.5 mg/kg/day from the oral rat developmental toxicity study for the acute dietary endpoint; at the developmental LOEL of 50 mg/kg/day, fetuses had delayed or partial ossification and extra ribs. Since the effect of concern is developmental, the risk assessment will evaluate acute dietary risk to the population subgroup of concern, Females 13+ Years Old.

2. *Short - and intermediate - term toxicity*. EPA has selected the NOEL of 10 mg/kg/day from the oral rabbit developmental toxicity study for calculation of short- and intermediate-term margins of exposure (MOEs). At the LOEL of 40 mg/kg/day, maternal toxicity included stomach mucosal erosion and death.

3. *Chronic toxicity*. EPA has not established the RfD for fomesafen. For the purposes of this tolerance, based upon available chronic toxicity data, the RfD of 0.0025 mg/kg/day was used. This RfD is based on the NOEL of 0.25 mg/kg/day from the rat carcinogenicity study. A 100-fold uncertainty factor was used to calculate this RfD. At the LOEL of 5.0 mg/kg/day there was liver toxicity and decreased body weight.

4. *Carcinogenicity*. Fomesafen is classified as a Group C carcinogen with a Q^* of 1.9×10^{-1} $(mg/kg/day)^{-1}$. This classification was based on: (i) Increases in both adenomas and carcinomas at several dose levels in both sexes of mice; (ii) some evidence of reduced latency for the time of tumor appearance; (iii) limited evidence of mutagenic effects; and, (iv) the structural similarity of fomesafen to other biphenyl ether herbicides which have been shown to be carcinogenic.

B. Exposures and Risks

1. *From food and feed uses*. A permanent tolerance has been established (40 CFR 180.433) for the residues of fomesafen, in or on soybeans at 0.05 ppm. A time-limited tolerance was also established on snap beans at 0.05 ppm recently, in connection with use under several emergency exemptions. Risk assessments were conducted by EPA to assess dietary exposures and risks from fomesafen as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute dietary risk assessment used tolerance level residue values and assumed 100 percent of crop treated. The resulting high-end exposure estimate of 0.0002 mg/kg/day translates to a dietary MOE

of 37,500 for the population subgroup of concern, Females 13+ Years Old. This MOE is a conservative risk assessment; refinement using anticipated residue values and percent crop treated data in conjunction with Monte Carlo analysis would result in a lower acute dietary exposure estimate.

ii. *Chronic exposure and risk*. For assessing chronic exposure and risks, anticipated residue values for all commodities were used; and percent of crop treated information for soybeans only; it was assumed that 100 percent of the snap bean crop in the eastern United States (the region where exemptions were issued, equivalent to 75 percent of the domestic snap bean crop), and 100 percent of the dry bean crops were treated. Based upon this, the existing uses on soybeans, snap beans, and dry beans result in an ARC that is equivalent to the following percentages of the RfD: U.S. population, 0.3%; Nursing Infants, 0.3%; Non-nursing Infants (<1 year old), 0.8%; Children (1-6 years old), 0.7%; and Children (7-12 years old), 0.5%. Additional refinement using percent of crop treated information for all commodities would result in lower dietary exposure estimates.

iii. *Cancer risk*. A dietary (food only) cancer risk assessment using anticipated residues and percent crop treated information, as described above, was performed for the U.S. population. The calculated food cancer risk from the established tolerances (excludes this action) is 8.5×10^{-7}. This is an overestimate, as not all of the snap bean crop in the eastern United States will be treated with fomesafen. The incremental contribution to the dietary cancer risk posed by this use on dry beans, amortized over 5 years (the average duration of a section 18 exemption, including repeat uses), is 0.5×10^{-7}. Therefore, the total of the fomesafen dietary cancer risk for the U.S. population from all commodity contributions, including this new tolerance on dry beans, is 9.0×10^{-7}. It should be noted that this is an overestimation of risk, because not all of the snap bean crops in the eastern United States, nor all of the dry bean crops in the United States, will be treated with fomesafen.

2. *From drinking water.* Fomesafen was not included in EPA's National Survey of Pesticides in Drinking Water Wells. There are no entries for fomesafen in the Pesticides in Ground Water Database. The Agency has not established Maximum Contaminant Levels or Health Advisory Levels for residues of fomesafen in drinking water.

Based on available data, EPA concludes that fomesafen could leach to ground water and may reach levels of 1.0 microgram (µg)/Liter (L). The level of 1.0 µg/L was based on a small scale prospective groundwater monitoring study conducted on soybeans at a vulnerable site in North Carolina. Fomesafen residues were detected in ground water (in 4 of 9 wells) sampled between 17 and 33 months after application. Fomesafen concentrations measured 1.0 µg/L (equal to the limit of determination of the analytical method).

Exposures and risks from residues of fomesafen in drinking water were calculated, as follows:

Adult Exposure = (chemical concentration in µg/L) $\times$ (10^{-3} mg/µg) $\times$ (2 L/day consumed) divided by (70 kg body weight).

Child Exposure = (chemical concentration in µg/L) $\times$ (10^{-3} mg/µg) $\times$ (1 L/day consumed) divided by (10 kg body weight).

Adult exposure is thus calculated to be 2.9×10^{-5} mg/kg/day and exposure of children is calculated to be 1.0×10^{-4} mg/kg/day.

i. *Acute exposure and risk*. For the population subgroup of concern for acute exposure (Females 13+ Years Old), the MOE is calculated at 260,000.

ii. *Chronic exposure and risk*. Exposure to residues of fomesafen in water utilizes 1.2% of the RfD for adults and 4.0% of the RfD for children.

iii. *Cancer risk*. Based on exposure levels for drinking water, as given above, the estimate of cancer risk is 2.7×10^{-6}. This figure is an overestimate, as it was arrived at based on several very conservative assumptions. Estimates used were calculated based on data from only one small scale study conducted in NC, for use of fomesafen on soybeans at a vulnerable site. This represents a worst case scenario, so is not representative of the ''average'' conditions of use. Additionally, there is language on the product label warning of the potential of fomesafen to leach to ground water in vulnerable areas. Vulnerable areas in this case refers to areas where soils are permeable (sand and silt loams) and the water table is shallow. The majority of areas of soybean production, and potential use of fomesafen, will not likely be vulnerable sites, thus the data used from the one small scale study greatly overestimates levels which could actually occur. Further, it is assumed that this exaggerated level will occur in all drinking water throughout the US, and that each individual consumes 2 liters of drinking water per day.

3. *From non-dietary exposure.* Fomesafen is not currently registered for use on sites that would be expected to result in non-dietary (residential) exposure. A non-dietary risk assessment is thus not appropriate for existing uses of fomesafen.

4. *Cumulative exposure to substances with common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

When considering structural similarities with other chemicals, fomesafen falls into the class of ''biphenyl ether'' chemical compounds; this means that this group of chemicals have structural similarities, including a biphenyl ether group, in common. This is used as a piece of supporting evidence for the classification of fomesafen as a Group C carcinogen, since other chemicals of this group (with similar structure) have been found to be carcinogens. However, other indications of the carcinogenicity of fomesafen (i.e., increases of adenomas and carcinomas in a mouse study, limited evidence of mutagenic effects) were also used in deciding this cancer classification. At this time, the Agency does not have sufficient understanding of the structural relationship to the mechanism of toxicity of these chemicals to conclude that they may be combined for the purposes of conducting a risk assessment. Although fomesafen contains some chemical structures in common with other chemicals that have been found to be carcinogens, EPA does not yet fully understand the implications of such a relationship, nor how, or if, these structures relate to the toxicological activity of the chemical. For the purposes of this tolerance action, therefore, EPA has not assumed that fomesafen has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk*. For the population of concern (Females 13+ Years Old), the calculated aggregate MOE value is 23,000. The aggregate MOE is the reciprocal of the sum of the reciprocal of the MOEs for food (25,000) and water (260,000). This aggregate MOE does not exceed EPA's level of concern for acute dietary exposure.

2. *Chronic risk*. Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to fomesafen from food will utilize 1.5% (0.3% for food and 1.2% for water) of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is Non-Nursing Infants, discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fomesafen in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fomesafen residues.

D. Aggregate Cancer Risk for U.S. Population

Using the conservative exposure assumptions described above, the total dietary (food only) cancer risk is estimated at 9×10^{-7}. This is an overestimate, as not all of the snap and dry bean crop in the eastern United States will be treated with fomesafen. For drinking water, the estimate of cancer risk is 2.7×10^{-6}. As stated above, this figure was based on extremely conservative assumptions, and thus is an overestimate; taking this into consideration, EPA scientists believe that the actual aggregate cancer risk will not exceed levels of concern.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*. i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of fomesafen, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100-fold safety factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold safety factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard safety factor.

ii. *Developmental toxicity studies*. In the rat developmental toxicity study, the maternal (systemic) NOEL was established at 100 mg/kg/day, based on stained fur at the LOEL of 200 mg/kg/day. The fetal (developmental) NOEL was 7.5 mg/kg/day, based on extra ribs and delayed ossification at the LOEL of 50 mg/kg/day.

In the rabbit developmental toxicity study, the maternal (systemic) NOEL was established at 10 mg/kg/day, based on mortality and stomach lesions at the LOEL of 40 mg/kg/day. The fetal (developmental) NOEL was established at 40 mg/kg/day (highest dose tested, no effects seen).

iii. *Reproductive toxicity study*. In the 2-generation reproductive toxicity study in rats, the parental (systemic) NOEL was 12.5 mg/kg/day, based on decreased body weight and liver necrosis at the LOEL of 50 mg/kg/day. The reproductive and developmental (pup) NOELs were 2.5 mg/kg/day, based on decreased pup body weight and reduced litter size at the LOEL of 12.5 mg/kg/day.

iv. *Pre- and post-natal sensitivity*. There were no developmental effects in rabbits at the highest dose tested, even in the presence of maternal toxicity. However, based on the developmental toxicity study in rats, developmental toxicity (alterations and delays in skeletal ossification) occurred at a dose level which was not maternally toxic, suggesting a special sensitivity to the fetus following in-utero exposure. Based on the results of the rat developmental toxicity study, an acute dietary risk assessment was conducted for Females 13+ Years Old. The MOE of 23,000 obtained for this risk assessment demonstrates that acute developmental (pre-natal) risks are low.

v. *Conclusion*. Based on the rat reproductive toxicity study discussed above, the pup LOEL (decreased body weight and reduced litter size) occurred at levels below the maternal NOEL and demonstrates post-natal pup toxicity unrelated to maternal effects. These results are suggestive of a special sensitivity for infants and children following post-natal exposure. Therefore, EPA recommends applying an extra 10-fold uncertainty (safety) factor in the chronic risk analysis. The low percentage of the RfD occupied by the most highly exposed child subgroup (4.8% of the RfD; 48% using the extra 10-fold factor) demonstrates that post-natal risks to infants and children are low.

2. *Acute risk*. The acute, aggregate dietary MOE of 33,000 which was calculated for females 13+ years old, accounts for both maternal and fetal

exposure. The large aggregate MOE calculated for females 13+ years old provides assurance that there is a reasonable certainty of no harm to infants and children.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to fomesafen from food and water utilizes from 4.3% of the RfD for nursing infants up to 4.8% of the RfD for non-nursing infants. As stated previously, the results from the developmental rat study suggest a special sensitivity to the fetus following in-utero exposure; and results from the reproductive rat study suggest a special sensitivity for infants and children following post-natal exposure. Therefore, EPA recommends applying an extra 10-fold uncertainty (safety) factor, which would bring the exposures given above to 43% and 48% of the RfD, for nursing and non-nursing infants, respectively. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The low percentage of the RfD occupied by estimates for the most highly exposed child population subgroup demonstrates that risks to infants and children are below EPA's level of concern, Use the following paragraph or delete and insert applicable text. and EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fomesafen residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residues in plants and animals is adequately understood. The residue of concern is fomesafen per se. Secondary residues in meat, milk, poultry, and eggs are not expected, since dry beans are not considered a livestock feed commodity.

B. Analytical Enforcement Methodology

An adequate enforcement method (Method GAM-RM-001/86) is available to enforce fomesafen tolerances.

C. Magnitude of Residues

Residues of fomesafen are not likely to exceed 0.05 ppm in or on dry beans as a result of this use. No animal feed items are associated with this use, and therefore, no secondary residues in livestock commodities are expected to result.

D. International Residue Limits

There are no CODEX or Canadian maximum residue levels established for residues of fomesafen in or on dry beans. A Mexican tolerance of 0.01 ppm is established for fomesafen residues in or on ''beans.''

E. Rotational Crop Restrictions

The federally registered label for the fomesafen product requested under these exemptions carries the following rotational crop restrictions: 4 months for small grains; 10 months for corn, cotton, peanuts, and rice; and 18 months for all other crops, particularly sunflowers, sugar beets, and sorghum. Part of the use restrictions for these exemptions includes that all applicable restrictions on the federal label must be followed; this includes these rotational crop restrictions.

VI. Conclusion

Therefore, the tolerance is established for residues of fomesafen in dry beans at 0.05 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 20, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300571] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia

address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. 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, the Agency has 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 this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 22, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.433, by alphabetically inserting the following item into the table in paragraph (b) to read as follows:

§ 180.433 Sodium salt of fomesafen; tolerance for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
* * *	* * * *	
Beans, dry	0.05	10/31/98

* * * * *

[FR Doc. 97–30383 Filed 11–18–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 185

[OPP–300475A; FRL–5746–5]

RIN 2070–AC78

Hydroprene Biochemical Pest Control Agent; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule expands the tolerance for residues of hydroprene, [(*S*)-(Ethyl (2*E*,4*E*,7*S*)-3,7,11-trimethyl-2,4-odecadienoate)], an insect growth regulator, on all food items in food-handling establishments to include perimeters and pantries, and warehouses to the list of permissible food storage sites and ultra low volume (ULV) fogging as a permissible treatment method under certain precautions and conditions. This rule also permits the use of point source device treatments providing those devices do not come into direct contact with food preparation surfaces and are kept a minimum distance of 3 feet from exposed foods. This rule also restricts the tolerance expression to residues of [(*S*)-(Ethyl(2*E*,4*E*,7*S*)-3,7,11-trimethyl 2,4-dodecadienoate)], the *S*-racemer of hydroprene since the *R*-racemer is no longer being supported in reregistration.

DATES: This regulation is effective November 19, 1997. Objections and requests for hearings must be received by EPA on or before January 20, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300475A], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300475A], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of

electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300475A]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Diana Horne, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511W) Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location, telephone number and e-mail address: Room 5-W42, 5th Floor, CS#l, 2800 Crystal Drive, Arlington, VA (703) 308–8367; horne.diana@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 4, 1997 (62 FR 30549)(FRL–5600–6) EPA issued a proposal to amend 40 CFR parts 180 and 185 by removing § 185.3625 and adding § 180.501, and by adding perimeters, pantries and warehouses to the list of permissible food storage sites and ultra low volume (ULV) fogging as a permissible treatment method under certain precautions and conditions. The Agency is also permitting the use of point source device treatments providing those devices do not come into direct contact with food preparation surfaces and must be kept a minimum distance of 3 feet from exposed foods. The Agency also proposed restricting the tolerance expression to residues of [(*S*)-(Ethyl (2*E*,4*E*,7*S*)-3,7,11-trimethyl-2,4-dodecadienoate)], the *S*-racemer of hydroprene. The *R*-racemer is being removed from the tolerance expression since Sandoz Agro Inc., the manufacturer, is supporting only the reregistration of (*S*)-hydroprene and no longer manufacturers the *R/S* hydroprene racemic mixture.

There were no comments in response to this proposed rule. The data submitted in the petition and other material have been evaluated.

Based on the reasoning and findings set forth in the preamble to the proposed rule, 40 CFR part 180 is amended as set forth below.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 20, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the hearing clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the hearing clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket number [OPP–300475A] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

III. Regulatory Assessment Requirements

This action finalizes an exemption from the tolerance requirement under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR

58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require special OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

XII. 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, the Agency has 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 this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additive, Pesticides and pests, Reporting and record keeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests

Dated: October 31, 1997.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. Section 180.501 is added to read as follows:

§ 180.501 Hydroprene; tolerances for residues.

(a) *General.* A tolerance of 0.2 part per million is established for residues of hydroprene [(*S*)-(Ethyl (2*E*,4*E*,7*S*)-3,7,11-trimethyl-2,4-dodecadienoate)], (CAS Reg. No. 65733–18–8) on all food items in food-handing establishments in accordance with the following prescribed conditions:

(1) Application shall be limited to spot, crack and crevice, perimeter and ultra low volume (ULV) fogging treatment in food storage or food-handling establishments, including warehouses, food service, manufacturing, and processing establishments such as restaurants, cafeterias, supermarkets, bakeries, breweries, dairies, meat slaughtering and packing plants, and canneries where food and food products are held, processed, and served: Provided that the food is removed or covered prior to such use, and food-processing surfaces are covered during treatment or thoroughly cleaned before using, or in the case of point-source device treatments, devices must not come into direct contact with food preparation surfaces and must be in a minimum distance of 3 feet from exposed foods.

(2) To assure safe use of the insect growth regulator, the label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.3625 [Removed]

b. Section 185.3625 is removed.

[FR Doc. 97–30382 Filed 11–18–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 383

[Docket No R–156]

RIN 2133–AB16

Determination of Fair and Reasonable Guideline Rates for the Carriage of Less-Than-Shipload Lots of Bulk and Packaged Preference Cargoes on U.S.-Flag Commercial Liner Vessels; Removal of Part

AGENCY: Maritime Administration, DOT.

ACTION: Final Rule.

SUMMARY: In connection with the President's Regulatory Reinvention Initiative, the Maritime Administration (MARAD), after having initiated a rulemaking with a notice of proposed rule-making (NPRM), has reviewed the subject regulations at 46 CFR part 383 and has determined to withdraw that rulemaking and remove the entire part. Part 383 has become unnecessary in view of the decline in the volume of U.S.-flag vessel liner service.

DATES: This rule is effective November 21, 1997.

FOR FURTHER INFORMATION CONTACT: Michael P. Ferris, Director, Office of Costs and Rates, Telephone: (202) 366–2324.

SUPPLEMENTARY INFORMATION: In administering the cargo preference program pursuant to the Cargo Preference Act of 1954, incorporated in section 901(b), Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1241(b)), MARAD provides guideline rates for the carriage of agricultural preference cargoes to the U.S. Department of Agriculture (USDA) and the Agency for International Development (AID) (''sponsoring agencies'') for bagged and packaged agricultural commodities carried on bulk vessels. The methodology for calculating guideline rates is stated in regulations at 46 CFR part 382. Those sponsoring agencies requested that MARAD extend the scope of its regulations at 46 CFR part 383 to provide them with guideline rates for bagged and packaged agricultural commodities carried on liner vessels in less-than-shipload lots. Accordingly, MARAD published a NPRM (60 FR 20069; April 24, 1995) proposing to amend its regulations in part 383 to provide guideline rates for bagged or packaged agricultural commodities in parcels of 5,000 tons and greater on vessels in liner services.

After careful review of the methodology that was proposed in the NPRM and the comments received in response to that methodology, MARAD has concluded that the current rule, as well as the amendments that it proposed to that rule, cannot adequately apply to liner vessels the methodology used in determining guideline rates for bulk vessels due to the fundamental difference between bulk and liner vessels. MARAD's basic assumption that large liner cargo parcels take on significant aspects of bulk shipment was not supported by the comments. Several commenters pointed out that even when large parcels are carried to the same country or area, the cargo discharging is typically done at numerous ports in the region, subjecting the liner operators to much greater risk of delays than bulk operators, which typically unload in one or two ports. In addition, voyages in the liner preference trades typically involve multiple shippers and receivers, each with their own shipment terms. MARAD believes that expansion of the scope of part 383, which addresses less-than-shipload lots of bulk preference cargo on liner vessels, is not appropriate at this time and that it would be more fitting to remove the entire part. This conclusion is supported by the fact that the rule has not been utilized since 1995, and that, with the sharp decline in the number of U.S.-flag general cargo vessels operating in liner services, it is very unlikely that any future preference cargoes will fall within the purview of the regulations contained therein. In the absence of a regulation, MARAD can make an ad hoc determination, if such a shipment is made in the future, under its general authority to administer the cargo preference laws of the United States.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review); Department of Transportation (DOT) Regulatory Policies Procedures; Pub. L. 104–121.

This rulemaking has been reviewed under Executive Order 12866 and Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is not considered to be an economically significant regulatory action under section 3(f) of E.O. 12866, since it has been determined that it is not likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. It is not considered to be a significant rule under the Department's Regulatory Policies and Procedures.

MARAD has determined that this rulemaking presents no substantive issue which it could reasonably expect would produce meaningful public comment since it is merely removing a rule that is obsolete, the retention of which could serve no useful purpose. Accordingly, pursuant to 5 U.S.C. 553 (c) and (d), the Administrative Procedure Act, MARAD finds that good cause exists to publish this as a final rule, without opportunity for public comment, and to make it effective in less than thirty days after the date of publication.

This rule has not been reviewed by the Office Management and Budget under Executive Order 12866.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities since MARAD has historically calculated guidline rates for only three operators in the liner trade.

Environmental Assessement

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR part 1320, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

This rule does not impose any unfunded mandates or requirements that will have an impact on the quality of the human environment.

List of Subjects in 46 CFR part 383

Agricultural commodities, Cargo vessels, Government procurement, Grant programs—foreign relations, Loan programs—foreign relations, Water transportation.

Accordingly, 46 CFR part 383 is hereby removed and reserved.

By Order of the Acting Maritime Administrator.

Dated: November 14, 1997.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 97–30370 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 96–20]

Port Restrictions and Requirements in the United States/Japan Trade

AGENCY: Federal Maritime Commission.

ACTION: Final rule; suspension of effectiveness.

SUMMARY: The Federal Maritime Commission is suspending the effectiveness of its final rule assessing fees on liner vessels operated by Japanese carriers, in light of agreements reached between the United States Government and the Government of Japan, and among affected commercial parties and the Government of Japan, addressing restrictive and unfavorable conditions affecting U.S. shipping in Japanese ports.

DATES: Effective November 13, 1997, 46 CFR 586.2 as published at 62 FR 9696, March 4, 1997, and amended at 62 FR 18532, April 16, 1997, is suspended.

ADDRESSES: Filings and requests for publicly available information should be addressed to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: On February 26, 1997 (62 FR 9696, March 4, 1997), the Commission issued a final rule pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), to assess per-voyage fees on Japanese liner carriers, in response to unfavorable conditions facing U.S. shipping in Japanese ports. On April 13, 1997 (62 FR 18533, April 16, 1997), the Commission postponed the effective date of the final rule (originally set for April 14, 1997) until September 4, 1997, to allow the Government of Japan and affected parties further opportunity to craft appropriate plans for addressing the unfavorable conditions identified in the final rule. On September 4, 1997, the Commission, having been presented

with no evidence of meaningful reforms to Japanese port conditions, took no action to prevent the rule from becoming effective.

Over the last several months, and particularly in recent weeks, U.S. and Japanese Government negotiators have worked assiduously to craft agreements and reform plans to remedy the unfavorable conditions that prompted the Commission's final rule. On October 27, 1997, it came to the Commission's attention that these negotiators had come to terms on certain documents which, upon ratification, would constitute a comprehensive agreement to reform Japanese port practices. Based on this positive development, the Commission entered into a consent order with the Japanese shipping lines, accepting a compromise payment of $1.5 million in full satisfaction of the $4 million owed (and overdue) for the month of September, and agreed to take no further action in this matter while the ratification of the agreements were pending.

On November 10, 1997, Chairman Creel received a letter from Under Secretary of State for Economic, Business, and Agricultural Affairs Stuart E. Eizenstat and Acting Maritime Administrator John Graykowski, conveying final signed copies of correspondence between Secretary of State Madeleine K. Albright and Ambassador Kunihiko Saito reflecting the arrangements reached by the U.S. and Japan delegations during the talks. Mr. Eizenstat and Mr. Graykowski stated that ''this package represents a reasonable basis to recommend that the Commission compromise all the remaining assessments under Docket No. 96–20 for October and November and suspend further assessments and the requirement for Japanese carriers to report further vessel calls.'' Attached to Ambassador Saito's letter were copies of two agreements among the Government of Japan and commercial interests regarding the system of prior consultation.

The Commission is persuaded that the arrangements reflected in these documents represent a significant step in the process of remedying unfavorable Japanese port conditions. While the Commission's ultimate concern is the improvement of actual shoreside practices and policies, in this case—where the issues are complex and the affected interests are several—the crafting and achievement of consensus on workable reform plans is a vital and commendable part of the process. The agreed-upon plans address in substance all of the unfavorable conditions identified in the Commission's final rule, covering both the issues of licensing of port transportation business operations and the system of prior consultation. With regard to the latter, relevant parties have agreed on reform of the existing system and the creation of an alternative process of prior consultations. We expect that these changes, when fully implemented, will remedy those unfavorable conditions identified in the final rule.

Accordingly, the Commission is now suspending the effectiveness of the final rule. This action has the effect of ceasing both the assessment of fees on Japanese carriers and the requirement that they report vessel calls.

The Commission expects that it will collect information periodically in the normal course to remain apprised of changes in port conditions resulting from implementation of the Agreements. However, we would note that the arrangements reached by U.S. and Japanese negotiators include provisions for consultation. It is our hope that, should any disputes or problems arise in the implementation of these agreements, they can appropriately be addressed through diplomatic and consultative mechanisms. To encourage such a process, if a complaint relating to matters contained in this docket is lodged with the Commission at any time by interested persons, the Commission immediately will notify the Secretary of State of such complaint, and will request the Secretary of State to seek resolution of the outstanding matters through diplomatic channels. At the same time, however, the Commission retains its authority to take further action, should it become necessary to do so.

Therefore, it is ordered, That 46 CFR 586.2 as published March 4, 1997 (62 FR 9696), and amended by the Commission April 16, 1997 (62 FR 18532) is hereby suspended.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–30277 Filed 11–18–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 96–28; FCC 97–270]

Connection of Customer-Provided Terminal Equipment to the Telephone Network

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On August 22, 1997, the Commission released a report and order adopting final rules to amend the Commissions rules, which govern the terms and conditions under which customer-provided terminal equipment may be connected to the telephone network without causing harm to the public switched network. As a result of the amendments, manufacturers will be able to test terminal equipment for compliance with a single, consistent set of technical standards accepted in both the United States and Canada. The harmonization of terminal attachment rules in the United States and Canada will be a model for our harmonization efforts with other countries.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT:

Technical Information: William VonAlven, (202) 418–2342 or email at wvonalen@fcc.gov.

Legal Information: Marian Gordon, (202) 418–2320 or email at mgordon@fcc.gov. The address for both is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20054. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. In this *Report and Order* (''*Order*''), we adopt final rules to amend part 68 of the Commission's rules, which governs the terms and conditions under which customer-provided terminal equipment may be connected to the telephone network without causing harm to the network.[1] The amendments we adopt herein are designed to harmonize United States and Canadian requirements governing connection of terminal equipment to the public switched network (''PSN'') and to promote barrier-free trade between Canada and the United States, in keeping with the spirit of the North American Free Trade Agreement

[1] *See* 47 CFR part 68. For a history of part 68, *see* Proposals for New or Revised Classes of Interstate and Foreign Message Toll Telephone Service (''MTS'') and Wide Area Telephone Service (''WATS''); Revision of part 68 of the Commission's rules to Specify Standard Plugs and Jacks for the Connection of Telephone Equipment to the Nationwide Telephone Network; and Amendment of Part 68 of the Commission's rules (Telephone Equipment Registration) to Specify Standards for and Means of Connection of Telephone Equipment to Lamp and/or Annunciator Functions of Systems, *Memorandum Opinion and Order,* 70 FCC 2d 1800 (1979), 45 FR 20841, Mar. 31, 1980.

(''NAFTA'').[2] As a result of these amendments to part 68, manufacturers in one country will be able to design and test terminal equipment to comply with a single, consistent set of technical standards accepted in both the United States and Canada.

II. Background

1. On March 9, 1995, the Telecommunications Industry Association (''TIA'') filed a Petition for Rulemaking (''Petition'') to amend §§ 68.300–68.318 and portions of § 68.2 of the Commission's rules to harmonize United States network protection standards and corresponding Canadian CS–03 certification regulations. Subpart D of part 68, which includes §§ 68.300 through 68.318, addresses ''Conditions for Registration,'' including requirements for environmental simulation (simulation ''mimics'' stresses that terminal equipment undergoes in shipment and handling that could potentially damage it), leakage current limitations, hazardous voltage limitation, signal power limitations, longitudinal balance limitations, on hook impedance limitations, billing protection, and hearing aid compatibility. Section 68.2 addresses the scope of the Commission's rules for terminal attachment.

2. TIA is a national trade association with more than 570 member companies engaged in the manufacture, sale and distribution of telecommunications equipment including terminal equipment. TIA's Petition is the culmination of four years of technical effort by United States and Canadian industry. In September, 1990, TIA's Engineering Subcommittee TR–41, sponsored by its User Premises Equipment Division, proposed a project to ''address differences'' between Canadian and United States terminal attachment rules.[3] The Subcommittee created a joint working group co-chaired by representatives from the United States and Canada to develop a harmonized set of rules to comply with both countries' requirements for terminal attachment.[4]

3. In February 1996, in response to TIA's Petition and comments received on the petition, the Commission issued a *Notice of Proposed Rulemaking* (*NPRM*) proposing to amend Part 68 to harmonize United States and Canadian requirements for connection to the PSN.[5] In the *NPRM*, the Commission tentatively concluded that the amended rules would promote barrier-free trade between the United States and Canada by eliminating unnecessary differences in terminal attachment requirements.[6] We tentatively concluded that the amended rules would be consistent with the spirit of NAFTA, and might become a guide for harmonization efforts with other countries.[7] Furthermore, we tentatively concluded that the amended rules would create a more competitive equipment marketplace, resulting in lower costs for equipment, thereby benefitting United States and Canadian consumers. We also stated that the proposed rules were consistent with our commitment to ensure that customers and manufacturers can connect terminal equipment to the telephone network without causing harm to the network.[8] Finally, we tentatively concluded that the Commission must retain ultimate responsibility for part 68 functions, but should rely on standards bodies whenever possible to resolve complex technical matters. We sought comment on these tentative conclusions.[9]

III. Discussion

A. Technical Amendments

4. *Positions of the Parties.* There is unanimity of opinion among commenters that harmonization of part 68 and CS–03 will benefit terminal equipment manufacturers as well as the telecommunications industry. There were no oppositions to any of the proposed rules. Northern Telecom (''Nortel''), for example, supports the Commission's proposal and suggests that harmonization of technical requirements for attachment of terminal equipment to the PSN will facilitate trade between the United States and Canada because manufacturers will need to design and test to only one set of common standards.[10] Lucent agrees that the amendment of part 68 will result in commercial advantages.[11] NYNEX argues that, under the proposed rules, a *de facto* barrier to trade that was inconsistent with NAFTA will be eliminated.[12] Ameritech says that the proposed rules are an example of how ''the government and industry can achieve agreement without the need for additional regulation.'' [13]

5. TIA and Sprint propose editorial corrections to the part 68 rules in attachments to each of their comments.[14] Additionally, Sprint argues that the Commission should add any tariffed data rates, *i.e.*, all speeds of data communications that telephone companies agree to provide to the public for a requested service, to the amendments to part 68.[15] More specifically, Sprint states that 38.4 kbps is an existing T1 subrate service and as such ''qualifies for protection in accordance with the purpose of the part 68 rules.'' [16]

6. *Discussion.* Based on the record, we amend part 68 to harmonize it with Canada's CS–03 and summarize our amendments as follows. Section 68.302 is designed to protect the network from harm by ensuring that, despite being subject to environmental stresses, terminal equipment will continue to comply with part 68 and not harm the

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[2] In Canada, certification means the right to attach terminal equipment to the PSN. Certification requires submission of an application that includes a technical description of the equipment and a measurement report showing compliance with CS–03, the Canadian terminal attachment standard. Canadian requirements for terminal attachment are issued by Industry Canada (''IC''). Under the direction of IC, the Terminal Attachment Program Advisory Committee (''TAPAC''), a government and industry advisory committee, reviews and recommends changes to equipment certification programs. Canada amended its terminal attachment rules (CS–03 standards) to harmonize Canadian standards for terminal equipment with those set forth in part 68 on August 14, 1996. *Canada Gazette*, part I, June 15, 1996, Notice No. SMSE–003–96.

[3] TIA's technical work is conducted through its Engineering Committees, which develop, maintain, and publish voluntary standards and technical reports. TIA encourages these committees to work cooperatively with members of the American National Standards Institute (''ANSI''), as well as international standards bodies outside the United States, to harmonize telecommunications equipment standards to avoid duplicating standardization work already successfully completed. TIA's stated trade policy goals include ''removal of barriers to market access, full participation of United States government and industry in the standards-setting process worldwide, and achievement of a minimum level of standards required to ensure interoperability and proper function of the international network.'' *See* TIA Petition at 2.

[4] According to TIA, a wide range of interest groups in the United States and Canada were represented including carriers, manufacturers, laboratories, consultants and government personnel.

[5] *See* Public Notice, ''Pleading Cycle Established for Comments on TIA's Petition for Rulemaking to Amend part 68, Subpart D'', 10 FCC Rcd 4548 (March 27, 1995); Amendment of Part 68 of the Commission's Rules, *Notice of Proposed Rulemaking*, 11 FCC Rcd 13282 (1996), 61 FR 15441, Apr. 8, 1996, *Erratum*, (Mar. 29, 1996) (''NPRM''). Seven parties filed comments in response to the *NPRM*. On April 16, 1996, one party filed reply comments.

[6] *NPRM* 11 FCC Rcd at 13295.

[7] *Id.* The rules are consistent with the aims of the World Trade Organization, which like NAFTA, seek to reduce trade barriers in order to promote competition.

[8] *Id.*

[9] *Id.*

[10] Nortel Comments at 1; *see also* VeriFone Comments at 1.

[11] Lucent Comments at 2.

[12] NYNEX Comments at 2.

[13] Ameritech Comments at 1; *see also* Verifone Comments at 1.

[14] Sprint Comments at 1; TIA Comments at 2.

[15] Sprint Comments at 3.

[16] Sprint requests that the valid tariffed data rate of 38.4 kbps be included in § 68.308(h)(1)(i), Table 68.308(c), and Table 68.310(b). *NPRM*, 11 FCC Rcd at 13241–42, 13431, 61 FR 15441, Apr. 8, 1996.

network. Amended § 68.302 deletes vibration, temperature, and humidity stresses from part 68, and applies mechanical shock stresses only to equipment that might be affected by such stress. We delete these stresses because experience has shown, and the record supports, that they are unnecessary given the technological evolution in telecom equipment from an arrangement of discrete electronic components to solid state circuitry. Over the past ten years, failures during part 68 registration testing involving these stresses is negligible. The benefits of streamlining our regulations in this regard far outweigh any possible harm to the network created by these stresses. In addition, as the result of industry coordination, we are including a new Type B surge test to better assure operability of customer premises equipment during lightning storms.

7. Section 68.304 leakage current limitations ensure that telephone connections are adequately insulated against hazards to telephone company personnel caused by voltages within the equipment itself or as a result of accidental contact with commercial power sources. Previously, § 68.304 required testing using a 60 Hertz test voltage. Amended § 68.304 changes the 60 Hertz standard to either 50 or 60 Hertz to harmonize with international frequencies used for this purpose and with Underwriters Laboratories and Canadian Standards Association insulation standards.

8. Section 68.306 imposes ''fail safe'' requirements on hazardous voltage. These limits are generally used throughout the telephone industry as voltage limitations below which special protection of telephone craft personnel is not required. Equipment must be designed to avoid creating voltages exceeding these limits under normal operation. We amend this section to delete hazardous voltage requirements for Message Registration (''MR'') and Automatic Identification of Outward Dialing (''AIOD'') because these types of technology are no longer in use.[17] In addition, this *Order* changes the current voltage limitation from 80 to 60 volts to harmonize it with international safety standards.

9. The signal power limitations of § 68.308 are designed to protect the network from interference caused by excessive signal power. We update this section by revising the ''Through Gain'' Table to reflect services such as Integrated Services Digital Network (''ISDN'') and to delete references to the 4-wire Conventional Termination Set interface.[18] We also expand subrate digital channel rates to include all rates presently used by industry, and adopt the ANSI T1 standard to replace the standard in the previous rules.[19] Section 68.308 also protects the network from harm by addressing crosstalk interference. We reword this section for clarity and rename this section ''Transverse Balance Limitations'' to harmonize it with internationally recognized Institute of Electrical and Electronic Engineers' (''IEEE'') terminology.

10. Section 68.312 addresses the impedance (*i.e.*, the resistance a circuit offers to alternating current) that must be maintained on a telephone line. The amended rules reorganize and reword this section for clarity. Specifically, the amended rules reduce the categories of ringer types. We also delete those sections addressing message registration because this technology is no longer in use.

11. Section 68.314 ensures that transmission of signals in the network does not interfere with proper operation of network billing equipment. The amendments to this section include rewording the section for clarity and deleting operating requirements for AIOD because the technology has been replaced. We also add a new section to clarify reverse battery billing (a type of loop signaling) requirements. Section 68.316 Hearing Aid Compatibility requirements are not amended by this *Order.* Furthermore, we delete reference to 1.544 Mbps digital ''keep-alive'' requirements from § 68.318 because they are no longer in effect.[20] Finally, we amend definitions in § 68.3. For example, we delete references to MR and AIOD equipment, but clarify that any MR and AIOD equipment that remains connected to the network may continue to be used under the provisions of § 68.2.

12. The record supports our tentative conclusion that amendment of part 68 as described above should lower the price consumers pay for terminal equipment by facilitating greater efficiencies in the manufacturing and testing of terminal equipment. Under the amended rules, the technical requirements of part 68 and CS–03 would be harmonized so that a manufacturer in one country can design and test terminal equipment to a single, consistent set of technical standards accepted in both the United States or Canada. We conclude that these efficiencies will lead to an even more competitive market for terminal equipment than currently exists, resulting in lower costs for equipment, thus benefitting United States and Canadian consumers.

13. Moreover, as commenters recognize, the amendments to part 68 reconcile differences in standards and testing consistent with NAFTA. Currently, terminal equipment manufactured for use in the United States must meet the technical requirements of part 68. Similarly, terminal equipment manufactured for use in Canada must comply with the technical requirements contained in CS–03. Each country's respective technical requirements have differed sufficiently that terminal equipment complying with one set of regulations would not necessarily comply with the technical requirements of the other country. These differences, as NYNEX correctly states, have created unreasonable burdens on manufacturers and are a *de facto* barrier to trade inconsistent with the goals of NAFTA. By reconciling differences in standards and testing, harmonization promotes the goals of NAFTA.[21] Furthermore, the record supports our tentative conclusion that, as amended, the rules remain consistent with the Commission's longstanding commitment to ensure that no public harm results from attachment of private equipment to the PSN. The record is unanimous that the amended

[17] Message Registration (''MR'') was a specific traffic recording system provided by certain older types of telephone systems. Automatic Identification of Outward Dialing (''AIOD'') was a private branch exchange (PBX) service feature that identified the calling line on calls directed to a public switched telephone network for automatic message accounting recording purposes.

[18] The Through Gain Table shows the maximum net amplification permitted in multiport systems between ports. The 4-wire Conventional Terminating Set interface was an older technology used for connection of customer provided equipment to analog voiceband private line services.

[19] Subrate digital channel rates previously used by the industry ranged from 2.4 to 64 kilobits/second (kbps).

[20] *Keep-alive* refers to constantly present direct current voltage formally provided from the central office. Section 68.318 previously stated that ''(u)ntil December 18, 1989, terminal equipment connecting to 1.544 Mbps services shall contain circuitry that assures continuity of output signal.''

[21] At a February 1997 meeting of the Telecommunications Standards Subcommittee (''TSSC''), Mexico agreed to a ''Minimal'' set of network protection standards pursuant to NAFTA Article 1304–1 (with minor exceptions to accommodate national deviations in networks) consistent with our initiative here to harmonize United States and Canadian network protection standards. The TSSC was established under NAFTA (Article 913) to creat a work plan for ''making compatible the standards-related measures for authorized equipment.'' It is comprised of officials from NAFTA member countries.

rules in no way diminish network protection.

14. Finally, we have reviewed the editorial corrections proposed by TIA and Sprint and find that they clarify our rules. For this reason, our final rules incorporate these suggested changes. In addition, we have added the tariffed data rate that Sprint suggests to our rules. While we decline to require that all tariffed rates be included, we agree that the specific tariffed rate Sprint suggests should be included to cover its currently available service.

B. Grandfathering Provision

15. *Positions of the Parties.* Lucent argues that the Commission should amend § 68.2(j) to ''provide grandfathering for existing equipment, in order to avoid any requirement to re-register all the equipment that has already been registered under current rules.'' [22] Lucent argues that a grandfathering provision is necessary to avoid re-registration of products that are already registered under current rules, are in use, and do not cause harm to the network. Several of the commenters add that re-registration of these products would impose substantial expense without yielding any benefits. We note that no party has objected to a grandfathering provision.

16. *Discussion.* We are persuaded by commenters that there would be no benefit to requiring the re-registration of equipment already in use and shown not to cause harm to the network. We therefore adopt a grandfathering provision.[23] The new rule 68.2(j) reads as follows:

Terminal equipment and systems registered prior to April 20, 1998, do not have to be re-registered unless subsequently modified. All new equipment and systems manufactured after May 19, 1999, must conform to the requirements.

C. Regulatory Process

17. *Background.* In the *NPRM,* we stated that although harmonization of technical requirements for attachment of terminal equipment satisfies NAFTA requirements in a manner consistent with the interests of United States industry in facilitating greater efficiencies in manufacturing terminal equipment, we recognized that the usefulness of a harmonized standard is jeopardized if our regulatory process does not allow the standard to evolve at the same pace as technology.[24] Consequently, we tentatively concluded that the Commission should rely, whenever possible, on standards bodies to resolve complex technical issues. We stated our reluctance, however, to substitute industry consensus for our part 68 rulemaking function as such consensus may not always promote the public interest.[25] We noted that standards bodies often lack the Commission's authority to ensure compliance with fair rules supporting safe and direct electrical connection of subscriber's terminal equipment to the PSN.[26]

18. *Positions of the Parties.* TIA and NYNEX urge the Commission to adopt a rule requiring manufacturers to comply with the technical recommendations of industry standards bodies with appropriate Commission oversight. NYNEX states that ''(i)nstead of specifying technical interfaces and requirements for terminal equipment in the rules, the Commission should simply adopt a rule that requires manufacturers of such equipment to comply with the technical requirements and technical recommendations developed by appropriate industry standards bodies under the Commission's auspices * * *.'' [27] NYNEX contends that through its oversight of industry standards bodies, the Commission should be satisfied as to the ''reasonableness'' of any resulting technical recommendations. TIA argues that the current regulatory rulemaking process lags behind changes in technology and supports NYNEX's proposal.[28] Moreover, TIA states that NYNEX's suggested approach would be consistent with recent congressional directives.[29] VeriFone contends that industry standards bodies should remain responsible for technical issues, but concurs with the Commission's decision to retain ultimate responsibility in matters pertaining to part 68 rulemaking authority.

19. *Discussion.* We acknowledge that efforts to harmonize our terminal attachment rules with those of other countries will be impeded if the regulatory rulemaking process fails to keep pace with technological changes. Therefore, we conclude that the Commission should rely, whenever possible, on standards bodies composed of industry experts to resolve complex technical matters. As we stated in the *NPRM,* the Consultative Committee on Telecommunications (''CCT'') has substantially assisted various harmonization activities.[30] Additionally, we recently sought comment on whether standards for enhanced wire quality and for determining gold equivalence should be permanent standards and, if so, what industry body or bodies shall determine an appropriate voluntary standard.[31] We decline, however, to substitute industry consensus completely for our part 68 rulemaking function. While they often may most expeditiously resolve complex technical matters, standards bodies lack the Commission's authority to ensure compliance with fair rules supporting safe and direct electrical connection of subscribers' telephone terminal equipment to the PSN. We note, for example, that new section 273(d)(4) of the Communications Act of 1934, as amended, seeks to ensure that voluntary standards do not become *de facto* standards that operate to exclude legitimate parties. Similarly, while it in this proceeding has strived to incorporate the advice and assistance of standards bodies to resolve complex technical matters, the Commission must continue to ensure through its rulemaking function that fair rules are developed.

IV. Conclusion

20. We conclude that the rules we adopt herein will eliminate unnecessary differences in terminal attachment requirements, and thereby promote barrier-free trade, between the United States and Canada. We find this to be consistent with the spirit and letter of NAFTA, which mandates elimination of trade barriers through reconciliation of differences in standards and testing procedures. These rules may become a model for our harmonization efforts with countries around the world and should benefit consumers by creating a more competitive equipment marketplace, thereby lowering the prices they pay for equipment. We conclude that these rules are consistent with the Commission's long-standing commitment to ensure that no public harm results from attachment of private

[22] Lucent Comments at 2; *see also* TIA Comments at 2–3.

[23] We note, however, that based on past experience, the vast majority of equipment covered by the grandfathering rule will be phased out of production and replaced by models that will be subject to the new rules.

[24] *NPRM,* 11 FCC Rcd at 13294.

[25] *Id.* at 13295.

[26] *Id.*

[27] NYNEX Comments at 3.

[28] TIA Comments at 3; TIA Reply Comments at 3–5.

[29] *See, e.g.,* National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, sec. 12, 110 Stat. 775, 782–83 (1996).

[30] *NPRM,* 11 FCC Rcd at 13294.

[31] Review of §§ 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, *Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking,* CC Docket No. 88–57, FCC 97–209 (June 17, 1997), at paras. 54–55, 62 FR 36463, Jul. 8, 1997.

equipment to the public switched network.

V. Regulatory Flexibility Analysis

21. *Final Regulatory Analysis:* As required by the Regulatory Flexibility Act (''RFA''),[32] an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Notice of Proposed Rulemaking* in this proceeding, 11 FCC Rcd 13282 (1996); *Erratum*, (released March 29, 1996) (''*NPRM*''). The Commission sought written public comments on the proposals in the *NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (''FRFA'') in this *Report and Order* (''*Order*'') conforms to the RFA.

Need for, and Objectives of, This Order and the Rules Adopted Herein

22. Consistent with the intent of the North American Free Trade Agreement (''NAFTA''), this *Order* amends part 68 of the Commission's rules to promote barrier-free trade between the United States and Canada. Part 68 governs the terms and conditions under which customer provided terminal equipment may be connected to the telephone network. As a result of the amendments to part 68, manufacturers will be able to test terminal equipment for compliance with a single, consistent set of technical standards accepted in both the United States and Canada. The harmonization of terminal attachment rules in the United States and Canada will be a model for our harmonization efforts with other countries. We adopt a grandfathering provision to cover equipment already registered under current rules.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

23. No comments were submitted specifically in response to the IRFA. We have reviewed the general comments to identify issues that may have a significant economic impact on small businesses. All commenters addressing the proposed amendments to part 68 of our Rules supported the amendments.

Description and Estimate of the Number of Small Entities To Which Rules Will Apply

24. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act.[33] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[34] SBA has defined a small business for Standard Industrial Classification (''SIC'') category 4813 (Telephone Communications), Except Radiotelephone) to be a small entity when it has no more than 1,500 employees.[35]

25. Consistent with our prior practice, we here exclude small incumbent local exchange carriers (LECs) from the definition of *small entity* and *small business concern*. While such a company may have 1500 or fewer employees and thus fall within the SBA's definition of a small telecommunications entity, such companies are either dominant in their field of operations or are not independently owned and operated. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this present analysis and use the term ''small incumbent LECs'' to refer to any incumbent LEC that arguably might be defined by SBA as a small business concern.

26. *Manufacturers of Telecommunications Equipment:* The Commission has not developed a definition of small manufacturers of terminal equipment. The closest applicable definition under SBA rules is for manufacturers of telephone and telegraph apparatus (SIC 3661), which defines a small manufacturer as one having 1000 or fewer employees.[36] According to 1992 Census Bureau data, there were 479 such manufacturers, and of those, 436 had 999 or fewer employees, and 7 had between 1000 and 1499 employees.[37] Consequently, we estimate that there are fewer than 443 small manufacturers of terminal equipment that may be affected by the decision and rules adopted in this *Order*.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

27. There are no reporting or recordkeeping requirements. Manufacturers will be required to test terminal equipment to a single, consistent set of technical standards accepted in both the United States and Canada.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

28. We are adopting § 68.2(j), which states that equipment already registered under the current rules does not need to be re-registered under the new rules. We believe that such a provision will save manufacturers, some of which may be small businesses, the expenses incurred in re-registering equipment that is already in use and has been shown not to cause harm to the network.[38] No alternative to this beneficial action was suggested.

Report to Congress

29. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). A copy of the *Order* and this FRFA (or summary thereof) will also be published in the **Federal Register**, *see* 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Ordering Clauses

30. Accordingly, *it is ordered* that, pursuant to sections 1, 4, 201–205, 218, 220, 226, 227, 255, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 218, 220, 226, 227, 255, and 610, and 5 U.S.C. 552 and 553, this Report and Order *is adopted*, and part 68 of the

[32] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[33] *See* 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632).

[34] 15 U.S.C. 632.

[35] *See* 13 CFR 121.201.

[36] 13 CFR 121.201, SIC 3661.

[37] 1992 Economic Census, Industry and Employment Size of Firm, Table 1D (data prepared by U.S. Census Bureau under contract to the U.S. Small Business Administration).

[38] The rule changes ameliorate potential technical barriers to entry in both the U.S. and Canada markets, thereby allowing manufacturers and suppliers, including small manufacturers and suppliers, a reasonable opportunity to conduct business in both markets. This result in consistent with the general purposes of section 257 of the 1996 Telecommunications Act, 47 U.S.C. 257. That section requires, among other things, that the Commission eliminate market entry barriers for small businesses who may provide parts or services to providers of telecommunications services and information services. *Id.* at section 257(a). The Commission recently issued a report in GN Docket No. 96–113 regarding its implementation of Section 257. *See Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, Report No. 97–8, 1997 WL 232120 (1997).

Commission's rules *are amended* as set forth below.

31. *It is further ordered,* that the rule amendments *set forth below shall be effective* April 20, 1997.

32. *It is further ordered,* that the Commission *shall send* a copy of this *Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 68

Administrative practice and procedure, Communications common carriers, Communications equipment, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

47 CFR part 68 is amended as follows:

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for part 68 continues to read as follows:

Authority: Sec. 1, 4, 5, 201–5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 155, 201–5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522.

2. Section 68.2 is amended by revising paragraphs (a)(3); (d), introductory text, and paragraph (j) and adding new paragraph (d)(4) to read as follows:

§ 68.2 Scope.

(a) * * *

(3) Of all PBX (or similar) systems to private line services for tie trunk type interfaces and off premises station lines. Services may only be added to this section as a result of rulemaking proceedings and equipment connected to such added services is afforded a reasonable transition period.

* * * * *

(d) Grandfathered private branch exchange (or similar) systems for connection to private line type services (tie trunk type services, off-premises station lines automatic identified outward dialing, and message registration):

* * * * *

(4) PBX (or similar) systems connected with automatic identified outward dialing or message registration private line services of a type that complies with paragraphs (d)(l) and (d)(2) of this section may remain connected for life without registration unless subsequently modified.

* * * * *

(j) Terminal equipment including premises wiring and protective apparatus (if any) directly connected to the network on April 20, 1997, may remain connected and be reconnected for life without registration, unless subsequently modified. New installations of terminal equipment, including premises wiring and protective apparatus (if any) may be installed (including additions to existing systems) up to May 19, 1999, without registration of any terminal equipment involved, provided that the terminal equipment is of a type directly connected to the network as of April 20, 1998. This terminal equipment may remain connected and be reconnected to the network for life without registration, unless subsequently modified.

* * * * *

3. Section 68.3 is amended by adding the following definitions for Capture Level, Dual Tone Multi Frequency (DTMF), Overload Point, and Voiceband in alphabetical order; by revising the definition for ''Zero Level Decoder''; removing the definitions for AOID Data Channel Simulator, AIOD Leads, Message Register Leads, Message Register Signaling Channel Simulator; in the definition for Tie Trunk Transmission Interfaces, by removing paragraph (c) 4-wire Conventional Terminating Set (CTS); removing figures 68.3(a), 68.3(f), 68.3(g), 68.3(h), 68.3(i), 68.3(j), 68.3(k), 68.3(l) and 68.3(m) and adding in their place Figures 68.3(a), 68.3(f), 68.3(g), 68.3(h), 68.3(i), 68.3(j) and 68.3(k). Figure references are corrected in the following definitions: In Local Area Data Channel Simulator, Figure 68.3(k) is revised to read Figure 68.3(i), and in Loop Simulator Circuit, Figure 68.3(i) is revised to read Figure 68.3(g) and Figure 68.3(j) is revised to read Figure 68.3(h).

§ 68.3 Definitions.

* * * * *

Capture Level: Equipment with AGC (Automatic Gain Control) signal power limiting has virtually no output signal for input levels below a certain value. At some input signal power, the output level will become significant (usually corresponding to the expected output level) for the service application. The input level at which this occurs is defined as the ''capture level.''

* * * * *

Dual Tone Multi Frequency (DTMF) network control signalling is a method of signalling using the voice transmission path. The method employs sixteen (16) distinct signals each composed of two (2) voiceband frequencies, one from each of two (2) geometrically spaced groups designated ''low group'' and ''high group.'' The selected spacing assures that no two frequencies of any group combination are harmonically related.

* * * * *

Overload Point: (1) For signal power limiting circuits incorporating automatic gain control method, the ''overload point'' is the value of the input signal that is 15 dB greater than the capture level.

(2) For signal power limiting circuits incorporating peak limiting method, the ''overload point'' is defined as the input level at which the equipment's through gain decreases by 0.4 dB from its nominal constant gain.

* * * * *

Voiceband: The voiceband for analog interfaces is the frequency band from 200 Hz to 3995 Hz.

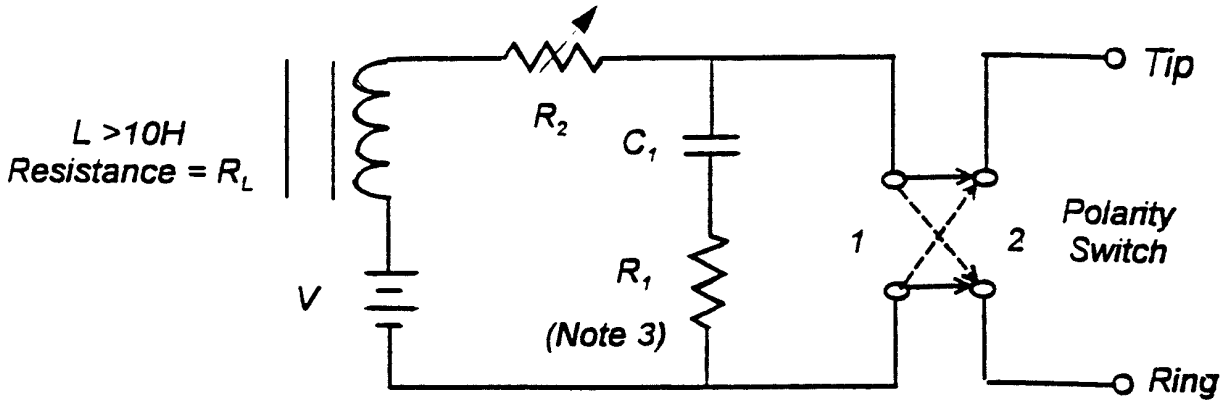
* * * * *

Zero Level Decoder: The zero level decoder shall comply with the u=255 PCM encoding law as specified in ITU–TSS (CCITT) Rec. G.711 for voiceband encoding and decoding. See also Fig. 68.3(j).

* * * * *

BILLING CODE 6712–01–P

LOOP SIMULATOR FOR LOOP START AND GROUND START CIRCUITS



C_1 = 500 mfd -10% + 50% R_1 = 600 ohms ± 1%

Condition	V - Volts	Switch Position for Test	R2 + RL
1	Min 42.5 Max 56.5	Both	Continuously variable over 400 to 1740 ohms
2	105	2	2000 ohms

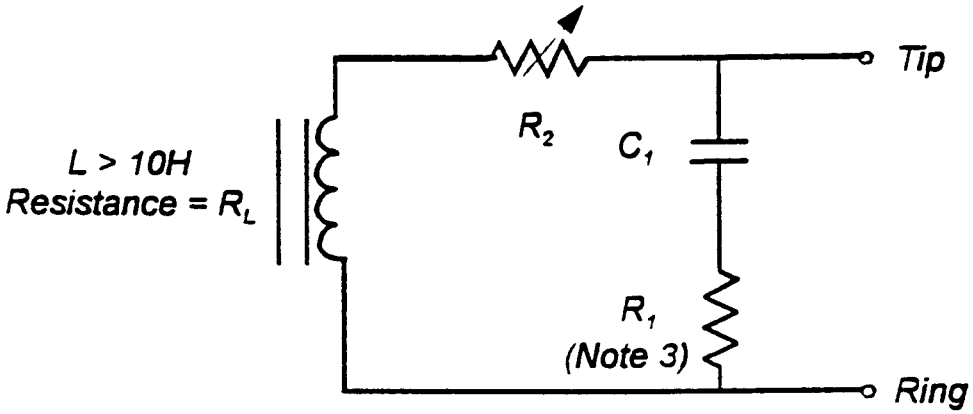
1. Means shall be used to generate, at the point of tip and ring connections to the terminal equipment or protective circuitry, the paramenters of dc line current and ac impedance which are generated by the illustrative circuit depicted above (as appropriate for the equipment under test).

2. In the Transverse Balance Limitations, Section 68.310, the use of the "dc portion of the loop simulator circuit" is specified. In such case components of R_1 and C_1 should be removed.

3. Tests for compliance may be made with either R_1 = 600 ohms or R_1, replaced by the alternative configuration shown in Figure 68.3(g).

Figure 68.3(a)

Loop Simulator for Reverse Battery Circuits



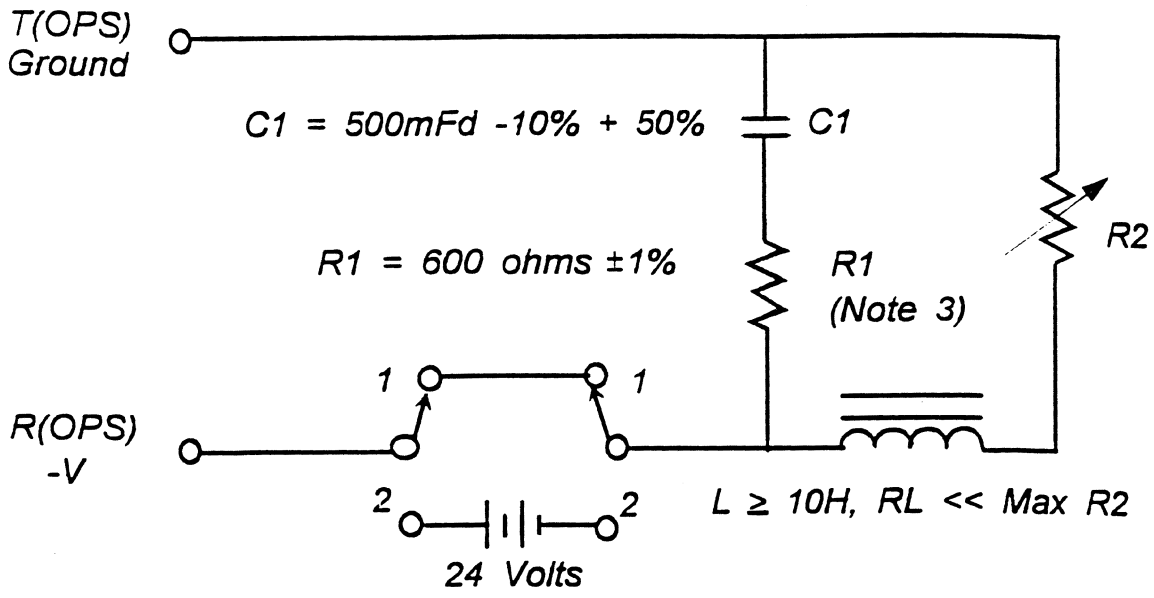
C_1 = 500 mFd -10% + 50%

R_1 = 600 ohms ± 1%

Notes for Figure 68.3(a) apply also to this drawing

$R_2 + R_L$
Continuously variable over 400 to 2450 ohms

Figure 68.3(b)



		R2 + RL Continuously Variable Over the Following Range		
Condition	Switch Position for Test	Class A RL	Class B RL	Class C RL
1	1	to 200 ohms	to 800 ohms	to 1800 ohms
2	2	N.A.	200 to 2300 ohms	900 to 3300 ohms

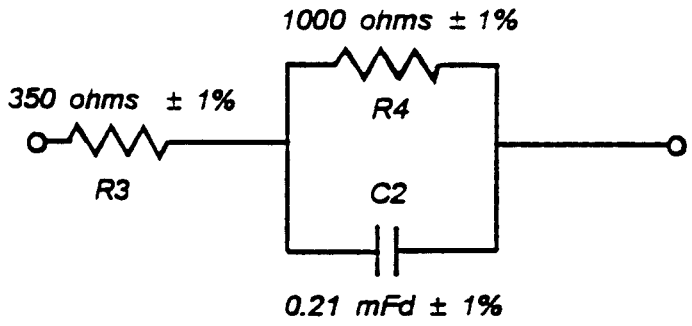
The minimum current for all resistance ranges shall be 16 mA.

Notes: (1) Means shall be used to generate, at the point of tip (T OPS) and ring (R OPS) connections to the PBX,the range of resistance and impedance which are employed by the illustrative circuit depicted above.
(2) In the transverse balance limitations, Section 68.310, the use of the "dc portion of the line simulator" is specified. In such case, components R1 and C1 above shall be removed.
(3) Tests for compliance may be made with either R1 = 600 ohms or R1 replaced by the alternative termination specified in Figure 68.3(g).

OFF PREMISES LOOP SIMULATOR

Figure 68.3(f)

ALTERNATIVE TERMINATION

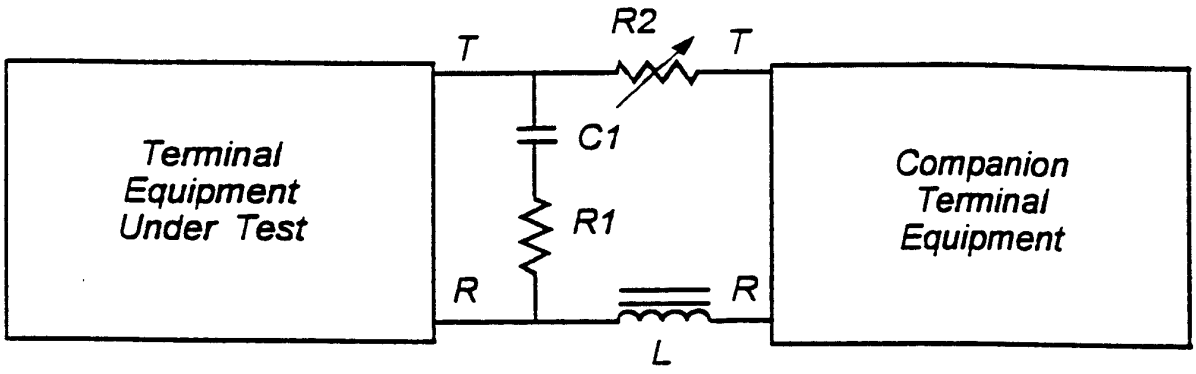


Note: When this alternative termination is used during signal power compliance testing, it replaces R1 (600 ohms) in the loop simulator circuit.

Figure 68.3(g)

LOOP SIMULATOR CIRCUIT

VOICEBAND METALLIC CHANNELS



C1 = 500mFd -10%, +5%

R1 = 600 ohms ± 1%

L = 10H, Resistance = RL

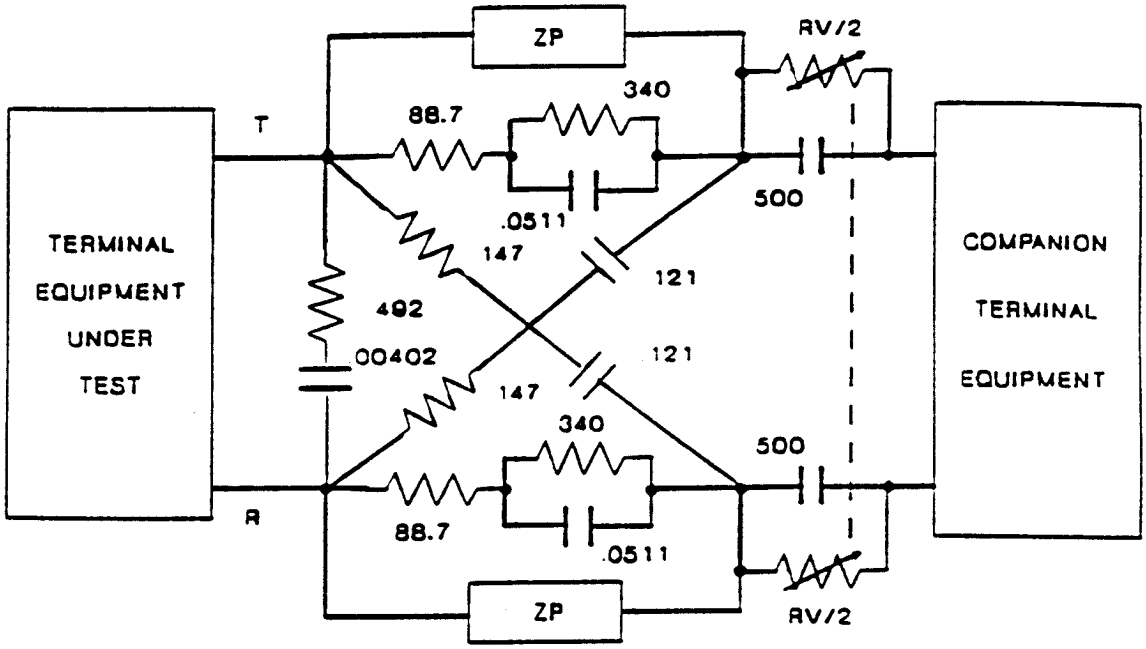
R2 + RL are continuously variable from RL to RX;

Where RX = Signaling range of Equipment Under Test, and

RL << RX

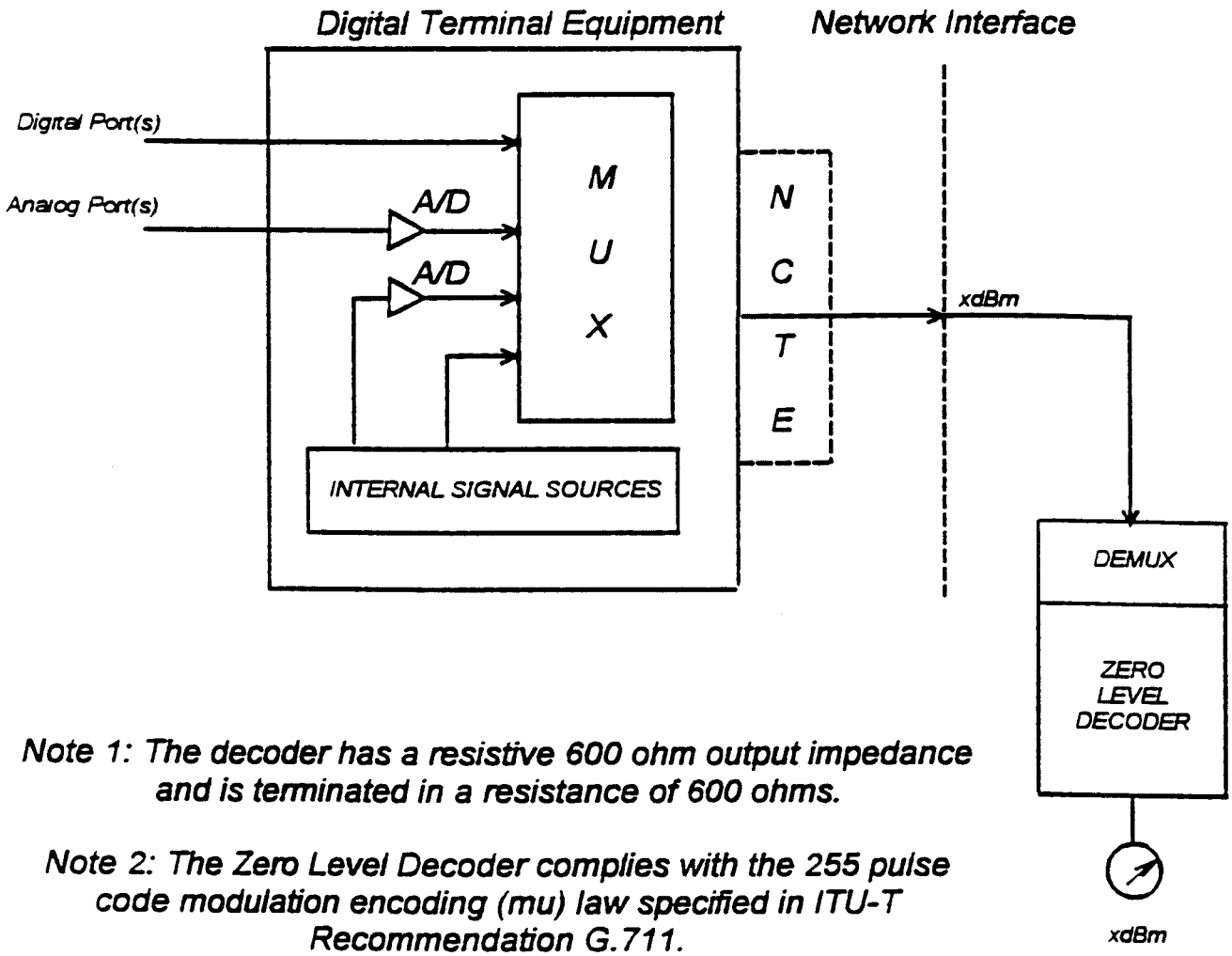
Notes: For Transverse Balance Measurements, Section 68.310, the DC portion of the loop simulator should be provided by removing R1 and C1. Companion Terminal Equipment grounds (including power supplies) must be isolated from Transverse Balance circuit grounds.

Figure 68.3(h)



Resistances (Ohms), Capacitances (uF), Tolerances ± 2%.
RV + RP = 50 thru 3000 Ohms.
ZP is the magnitude of the lowpass filter impedance which is ⟨ 25 Ohm dc; ⟩ 3 Kohm from 10 Hz to 6 Khz.
RP/2 = dc resistance of lowpass filter, ZP in parallel with 428.7 Ohm.

Figure 68.3(i) LADC Impedance Simulator for Metallic Voltage Tests

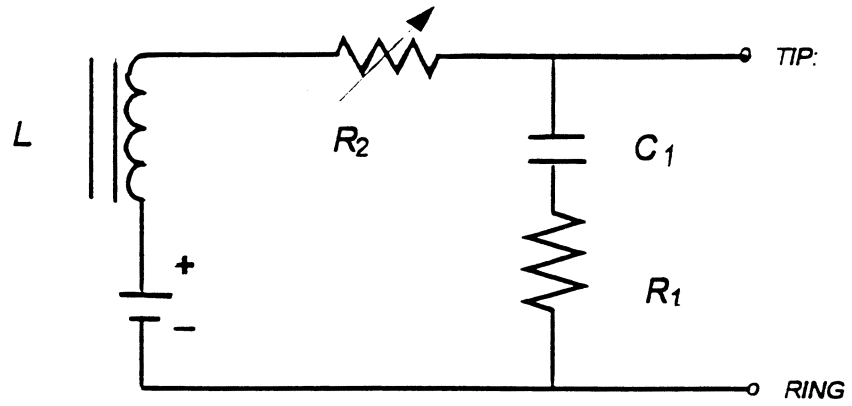


Note 1: The decoder has a resistive 600 ohm output impedance and is terminated in a resistance of 600 ohms.

Note 2: The Zero Level Decoder complies with the 255 pulse code modulation encoding (mu) law specified in ITU-T Recommendation G.711.

ZERO-LEVEL DECODER TEST CONFIGURATION FOR SUBRATE AND 1.544 MBPS DIGITAL CHANNELS

Figure 68.3 (j)



$L \geq 10H$ (Resistance = R_L)

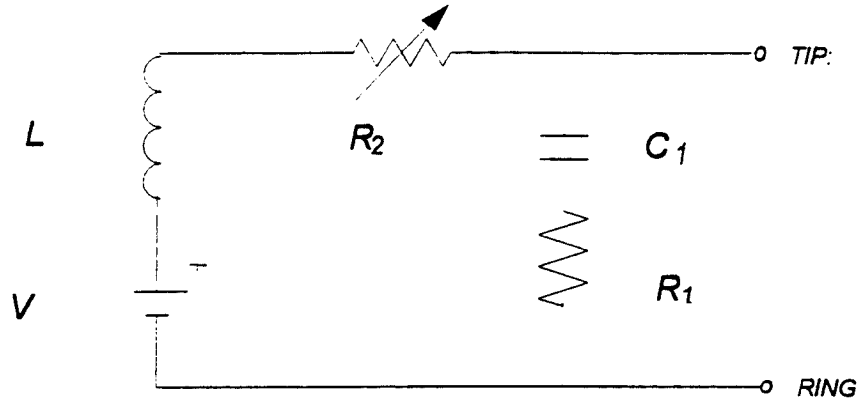
$R_1 = 600$ ohms $\pm 1\%$

$C_1 = 500mF$, -10%, +50%

TEST CONDITIONS FOR ANALOG MODE

V (volts)		R2 + RL (ohms)
Min	Max	continuously variable
36	46	610 to 1510

SIMULATOR CIRCUIT FOR PSDS IN ANALOG MODE
Fig 68.3(k)



L = or > 10H (Resistance = R_L)

R_1 = 600 ohms +/- 1%

C_1 = 500mF, -10%, +50%

TEST CONDITIONS FOR ANALOG MODE

V (volts)		R2 + RL (ohms)
Min	Max	continuously variable
36	46	610 to 1510

SIMULATOR CIRCUIT FOR PSDS IN ANALOG MODE
Fig 68.3(m)

BILLING CODE 6712–01–C

§ 68.222 [Removed]

4. Section 68.222 is removed.

5. Section 68.300 is revised to read as follows:

§ 68.300 Labeling requirements.

(a) Registered terminal equipment and registered protective circuitry shall have prominently displayed on an outside surface the following information in the following format:

Complies With Part 68, FCC Rules

FCC Registration Number: _____

Ringer Equivalence: _____

(b) Registered terminal equipment and registered protective circuitry shall also have the following identifying information permanently affixed to it.

(1) Grantee's name.

(2) Model number, as specified in the registration application.

(3) Serial number or date of manufacture.

(4) Country of origin of the equipment: ''Made in _____.'' Required if the equipment is not manufactured in the United States. (Country of origin shall be determined in accordance with 19 U.S.C. 1304 and regulations promulgated thereunder.)

(5) As used herein, *permanently affixed* means that the required nameplate data is etched, engraved, stamped, indelibly printed or otherwise permanently marked. Alternatively, the required information may be permanently marked on a nameplate of metal, plastic, or other material fastened to the enclosure by welding, riveting, or with a permanent adhesive. Such a nameplate must be able to last for the expected lifetime of the equipment and must not be readily detachable.

(6) When the device is so small or for such use that it is not practical to place the statements specified in this section on it, the information required by paragraphs (a) and (b) of this section shall be placed in a prominent location in the instruction manual or pamphlet supplied to the user. The FCC Registration Number and the Model Number shall be displayed on the device.

6. Section 68.302 is revised to read as follows:

§ 68.302 Environmental simulation.

Unpackaged Registered Terminal Equipment and Registered Protective Circuitry shall comply with all the rules specified in this subpart, both prior to and after the application of the mechanical and electrical stresses specified in this section, notwithstanding that certain of these stresses may result in partial or total destruction of the equipment. Both telephone line surges, Type A and Type B, shall be applied as specified in paragraphs (b) and (c) of this section. Different failure criteria apply for each surge type.

(a) *Mechanical shock.* (1) Hand-Held Items Normally Used at Head Height: 18 random drops from a height of 1.5 meters onto concrete covered with 3 millimeters asphalt tile or similar surface.

(2) Table (Desk) Top Equipment 0–5 kilograms: Six random drops from a height of 750 millimeters onto concrete covered with 3 millimeters asphalt tile or similar surface.

(3) The drop tests specified in the mechanical shock conditioning stresses shall be performed as follows: The unit should be positioned prior to release to ensure as nearly as possible that for every six drops there is one impact on each of the major surfaces and that the surface to be struck is approximately parallel to the impact surface.

(b) *Telephone Line Surge—Type A.—(1) Metallic.* Apply two metallic voltage surges (one of each polarity) between any pair of connections on which lightning surges may occur; this includes:

(i) Tip to ring;

(ii) Tip 1 to ring 1; and

(iii) For a 4-wire connection that uses simplexed pairs for signalling, tip to ring 1 and ring to tip 1.

Note to paragraph (b)(1). The surge shall have an open circuit voltage waveform in accordance with Figure 68.302(b) having a front time (t_f)) of 10 µs maximum and a decay time (t_d) of 560 µs minimum, and shall have a short circuit current waveshape in accordance with Figure 68.302(c) having a front time (t_f) of 10 ms maximum and a decay time (t_d) of 560 µs minimum. The peak voltage shall be at least 800 volts and the peak short circuit current shall be at least 100 amperes. Surges are applied:

(A) With the equipment in all states that can affect compliance with the requirements of this part 68. If an equipment state cannot be achieved by normal means of power, it may be achieved artificially;

(B) With equipment leads not being surged (including telephone connections, auxiliary leads, and terminals for connection to non-registered equipment) terminated in a manner that occurs in normal use;

(C) Under reasonably foreseeable disconnection of primary power sources, with primary power cords plugged and unplugged, if so configured.

(2) *Longitudinal.* Apply two longitudinal voltage surges (one of each polarity) from any pair of connections on which lightning surges may occur. This includes the tip-ring pair and the tip 1—ring 1 pair, to earth grounding connections, and to all leads intended for connection to non-registered equipment, connected together. Surges are applied as follows:

(i) With the equipment in all states that can affect compliance with the requirements of this part 68. If an equipment state cannot be achieved by normal means of power, it may be achieved artificially;

(ii) With equipment leads not being surged (including telephone connections, auxiliary leads, and terminals for connection to non-registered equipment) terminated in a manner that occurs in normal use;

(iii) Under reasonably foreseeable disconnection of primary power sources, as for example, with primary power cords plugged and unplugged.

Note to paragraph (b)(2): The surge shall have an open circuit voltage waveform in accordance with Figure 68.302(b) with a front time (t_fµ) of 10 ms (µseconds) maximum and a decay time (t_d) of 160 ms minimum, and shall have a short circuit current waveshape in accordance with Figure 68.302(c) having a front time (t_f) of 10 ms maximum and a decay time (t_d) of 160 ms minimum. The peak voltage shall be at least 1500 volts and the peak short circuit current shall be at least 200 amperes.

(3) Failure Modes resulting from application of Type A telephone line surges. Regardless of operating state, equipment and circuitry are allowed to be in violation of the longitudinal balance requirements of § 68.310(b) and (c) and, for terminal equipment connected to Local Area Data Channels, the longitudinal signal power requirements of § 68.308(f)(3), if:

(i) Such failure results from an intentional, designed failure mode that has the effect of connecting telephone or auxiliary connections with earth ground; and,

(ii) If such a failure mode state is reached, the equipment is designed so that it would become substantially and noticeably unusable by the user, or an indication is given (*e.g.,* an alarm), in order that such equipment can be immediately disconnected or repaired.

Note to paragraph (b)(3)(ii): The objective of paragraph (b)(3)(ii) is to allow for safety circuitry to either open-circuit, which would cause a permanent on-hook condition, or to short-circuit to ground, as a result of an energetic lightning surge. Off-hook tests would be unwarranted if the off-hook state cannot be achieved. A short to ground has the potential for causing interference resulting from longitudinal imbalance, and therefore designs must be adopted which will cause the equipment either to be disconnected or repaired rapidly after such a state is reached, should it occur in service.

(c) *Telephone Line Surge—Type B.—*(1) *Metallic.* Apply two metallic voltage surges (one of each polarity) to equipment between any pair of

connections on which lightning surges may occur; this includes:

(i) Tip to ring;

(ii) Tip 1 to ring 1; and

(iii) For a 4-wire connection that uses simplexed pairs for signalling, tip to ring 1 and ring to tip 1.

Note to paragraph (c)(1): The surge shall have an open circuit voltage waveform in accordance with Figure 68.302(b) having a front time (t_f) of 9 ms (±30%) and a decay time (t_d) of 720 μs (±20%) and shall have a short circuit current waveshape in accordance with Figure 68.302(c) having a front time (t_f) of 5 ms (±30%) and a decay time (t_d) of 320 μs (±20%). The peak voltage shall be at least 1000 volts and the peak short circuit current shall be at least 25 amperes. The wave shapes are based on the use of ideal components in Figure 68.302(a) with S_2 in Position M. Surges are applied:

(A) With the equipment in all states that can affect compliance with the requirements of this part 68. If an equipment state cannot be achieved by normal means of power, it may be achieved artificially.

(B) With equipment leads not being surged (including telephone connections, auxiliary leads, and terminals for connection to non-registered equipment) terminated in a manner that occurs in normal use.

(C) Under reasonably foreseeable disconnection of primary power sources, as for example, with primary power cords plugged and unplugged.

(2) *Longitudinal.* Apply two longitudinal voltage surges (one of each polarity) from any pair of connections on which lightning surges may occur. This includes the tip-ring pair and the tip 1—ring 1 pair to earth grounding connections and to all leads intended for connection to non-registered equipment, connected together. Surges are applied as follows:

(i) With the equipment in all states that can affect compliance with the requirements of this part 68. If an equipment state cannot be achieved by normal means of power, it may be achieved artificially.

(ii) With equipment leads not being surged (including telephone connections, auxiliary leads, and terminals for connection to non-registered equipment) terminated in a manner that occurs in normal use.

(iii) Under reasonably foreseeable disconnection of primary power sources, with primary power cords plugged and unplugged, if so configured.

Note to paragraph (c)(2): For each output lead of the surge generator, with the other lead open, the surge shall have an open circuit voltage waveform in accordance with Figure 68.302(b) having a front time (t_f) of 9 μs (±30%) and a decay time (t_d) of 720 μs (±20%) and shall have a short circuit current waveshape in accordance with Figure 68.302(c) having a front time (t_f) of 5 μs (±30%) and a decay time (t_d) of 320 μs (±20%). The peak voltage shall be at least 1500 volts and the peak short circuit current shall be at least 37.5 amperes. The wave shapes are based on the use of ideal components in Figure 68.302)(a) with S_2 in Position L.

(3) *Failure Modes resulting from application of Type B telephone line surges.* Registered terminal equipment and registered protective circuitry shall be capable of withstanding the energy of Surge Type B without causing permanent opening or shorting of the interface circuit and without sustaining damage that will affect compliance with these rules.

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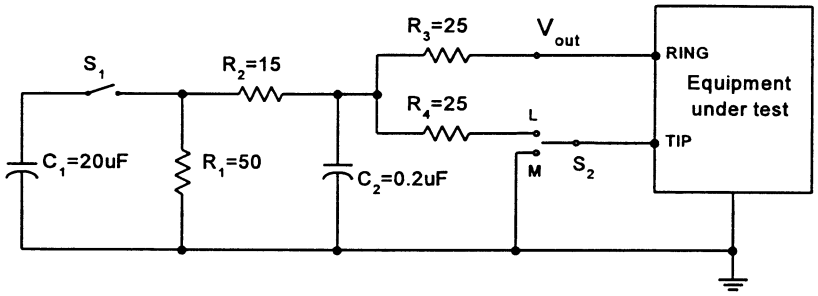
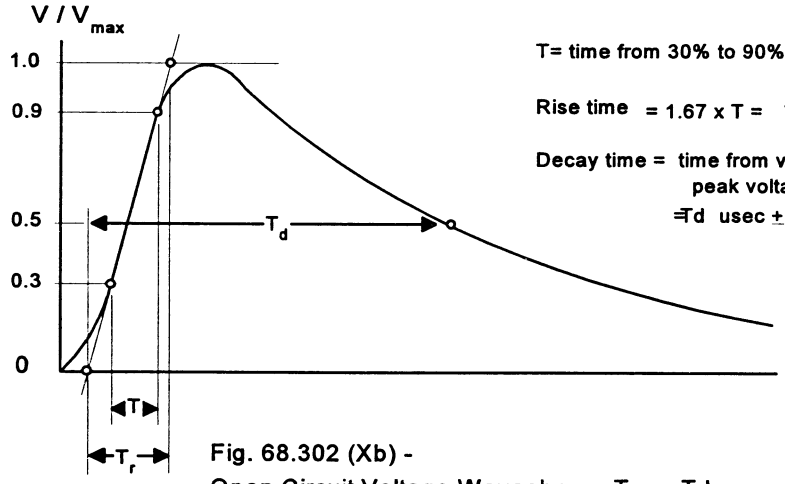


Fig. 68.302 (Xa) - Simplified Surge Generator

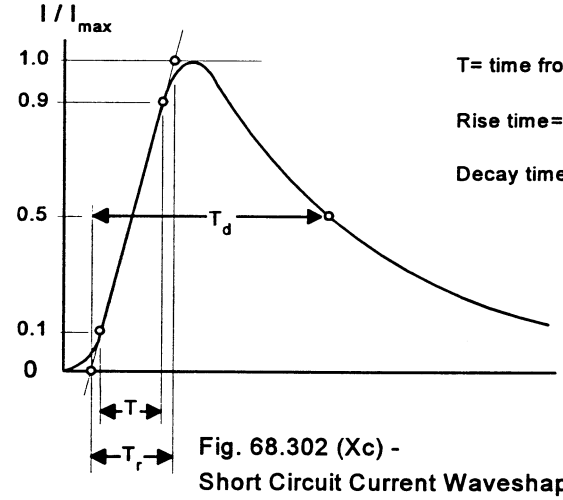


T= time from 30% to 90% of peak voltage

Rise time = 1.67 x T = Tr us ± 30%

Decay time = time from virtual origin to 50% of peak voltage on trailing edge
= Td usec ± 20%

Fig. 68.302 (Xb) -
Open Circuit Voltage Waveshape, Tr x Td



T= time from 10% to 90% of peak current

Rise time= 1.25xT = Tr usec ± 30%

Decay time = time from virtual origin to 50% of peak current on trailing edge
= Td usec ± 20%

Fig. 68.302 (Xc) -
Short Circuit Current Waveshape, Tr x Td

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(d) *Power Line Surge.* (1) Apply six power line surges (three of each polarity) between the phase and neutral terminals of the ac power line while the equipment is being powered. The surge shall have an open circuit voltage waveform in accordance with Figure 68.302(b) having a front time (t_f) of 2 μs maximum and a decay time (t_d) of 10 μs minimum and shall have a short circuit current waveshape in accordance with Figure 68.302(c) with a front time (t_f) of 2 μs maximum and a decay time (t_d) of 10 μs minimum. The peak voltage shall be at least 2500 volts and the peak short circuit current shall be at least 1000 amperes. Surges are applied:

(i) With the equipment in all states that can affect compliance with the requirements of this part 68. If an equipment state cannot be achieved by normal means of power, it may be achieved artificially;

(ii) With equipment leads not being surged (including telephone connections, auxiliary leads, and terminals for connection to non-registered/non-certified equipment) terminated in a manner which occurs in normal use.

(2) Failure Modes resulting from application of power line surge. Registered terminal equipment and registered protective circuitry shall comply with all the criteria contained in the rules and regulations in this subpart, both prior to and after the application of the power line surge specified in paragraph (d)of this section, not withstanding that this surge may result in partial or total destruction of the equipment under test.

8. Section 68.304 is revised to read as follows:

§ 68.304 Leakage current limitations.

Registered terminal equipment and registered protective circuitry shall have a voltage applied to the combination of points listed in the table below. The test voltage shall be ac of 50 or 60 Hz rms.

(a) All telephone connections;

(b) All power connections;

(c) All possible combinations of exposed conductive surfaces on the exterior of such equipment or circuitry including grounding connection points, but excluding terminals for connection to other terminal equipment;

(d) All terminals for connection to registered protective circuitry or non-registered equipment;

(e) All auxiliary lead terminals;

(f) All E&M lead terminals, and

(g) All PR, PC, CY1 and CY2 leads.

TABLE 68.304(a).—VOLTAGE APPLIED FOR VARIOUS COMBINATIONS OF ELECTRICAL CONNECTIONS

Voltage source connected between:	ac value[1]
(a) and (b) (see NOTES 1, 2, 3)	1500
(a) and (c) (see NOTES 1, 2)	1000
(a) and (d) (see NOTES 1, 2)	1000
(a) and (e) (see NOTES 1, 2)	1000
(a) and (f) (see NOTES 1, 2)	1000
(a) and (g) (see NOTES 1, 2)	1000
(b) and (c) (see NOTE 3)	1500
(b) and (d) (see NOTE 3)	1500
(b) and (e) (see NOTE 3)	1500
(b) and (f) (see NOTE 3)	1500
(b) and (g) (see NOTE 3)	1500
(c) and (e) (see NOTES 1, 2)	1000
(c) and (f) (see NOTES 1, 2)	1000
(d) and (e) (see NOTE 2)	1000
(d) and (f) (see NOTE 2)	1000
(e) and (f) (see NOTE 2)	1000

[1] Value to which test voltage is gradually increased.

Notes to Table 68.304(a):

(1) Gradually increase the voltage from zero to the values listed in Table 68.304(a) over a 30-second time period, then maintain the voltage for one minute. The current in the mesh formed by the voltage source and these points shall not exceed 10 mA peak at any time during this 90-second interval.

(2) Equipment states necessary for compliance with the requirements of this section that cannot be achieved by normal means of power shall be achieved artificially by appropriate means.

(3) A telephone connection, auxiliary lead, or E&M lead that has an intentional dc conducting path to earth ground at operational voltages (such as a ground start lead), may be excluded from the leakage current test in that operational state. Leads or connections excluded for this reason shall comply with the requirements of § 68.306(e)(1).

(4) A telephone connection, auxiliary lead, or E&M lead that has an intentional dc conducting path to earth ground for protection purposes at the leakage current test voltage (such as through a surge suppressor), may have the component providing the conducting path removed from the equipment for the leakage current test in that operational state. Components removed for this reason shall comply with the requirements of § 68.306(e)(2).

(5) Filter paths, such as capacitors used in EMI filters, are left in place during leakage current testing, since these components can be a path for excessive leakage.

(6) For multi-unit equipment interconnected by cables, that is evaluated and registered as an interconnected combination or assembly, the specified 10 mA peak maximum leakage current limitation other than between power connection points and other points, may be increased as described here to accommodate cable capacitance. The leakage current limitation may be increased to (10N+0.13L) mA peak where L is the length of interconnecting cable in the leakage path in meters and N is the number of equipment units that the combination or assembly will place in parallel across a telephone connection.

(7) RF filters and surge protectors on the line side of power supplies may be disconnected before making § 68.304 leakage measurements. As an alternative to disconnecting these filters and surge protectors, this measurement may be made using a dc voltage equal to the peak ac test voltage.

9. Section 68.306 is revised to read as follows:

§ 68.306 Hazardous voltage limitations.

(a) *General.* Under no condition of failure of registered terminal equipment or registered protective circuitry that can be conceived to occur in the handling, operation or repair of such equipment or circuitry, shall the open circuit voltage on telephone connections exceed 70 volts peak after one second, except for voltages for network control signalling, alerting and supervision.

(1) *Type I E&M Leads.* Registered terminal equipment shall comply with the following requirements for terminal equipment on the ''A'' or ''B'' side of the interface as shown in Figures 68.3(e)(i):

(i) The dc current on the E lead shall not exceed 100 mA.

(ii) The maximum dc potentials to ground shall not exceed the following when measured across a resistor of 20 kohms ±10%:

TABLE 68.306(a).—TYPE I E&M, DC POTENTIALS

	E lead	M lead
TE on ''B'' side originates signals to network on E lead.	±5 V	±5 V.
TE on ''A'' side originates signals to network on M lead.	−56.5 V; no positive potential with respect to ground.	−56.5 V; no positive potential with respect to ground.

(iii) The maximum ac potential between E&M leads and ground reference shall not exceed 5V peak.

(iv) M lead protection shall be provided so that voltages to ground do not exceed 60 volts. For relay contact implementation, a power dissipation capability of 0.5 watt shall be provided in the shunt path.

(v) If the registered terminal equipment contains an inductive component in the E lead, it must assure that the transient voltage across the contact as a result of a relay contact opening does not exceed the following voltage and duration limitations:

(A) 300 volts peak,

(B) A rate of change of one volt per microsecond, and

(C) A 60-volt level after 20 milliseconds.

(2) *Type II E&M Leads.* Registered terminal equipment shall comply with the following requirements:

(i) For terminal equipment on the ''A'' side of the interface, the dc current in the E lead shall not exceed 100 mA. The maximum ac potential between the E lead and ground shall not exceed 5 V peak.

(ii) For terminal equipment on the ''B'' side of the interface, the dc current in the SB lead shall not exceed 100 mA. The maximum ac potential between the SB lead and ground shall not exceed 5 V peak.

(iii) The maximum dc potentials to ground shall not exceed the following when measured across a resistor of 20 kohms ±10%:

TABLE 68.306(b).—TYPE II E&M, DC POTENTIALS

	E lead	M lead	SB lead	SG lead
TE on ''B'' side of the interface originates signals to network on E lead.	±5 V	±5 V	−56.5 V; no positive potential with respect to ground.	±5 V.
TE on ''A'' side of the interface originates signals to network on M lead.	−56.5 V; no positive potential with respect to ground.	±5 V	±5 V	±5 V.

(iv) The maximum ac potential to ground shall not exceed 5V peak on the following leads, from sources in the terminal equipment:

(A) M, SG and SB leads for terminal equipment on the ''A'' side of the interface.

(B) E, SG and M leads for terminal equipment on the ''B'' side of the interface.

(v) If the registered terminal equipment contains an inductive component in the (E) or (M) lead, it must assure that the transient voltage across the contact as a result of a relay contact opening does not exceed the following voltage and duration limitations:

(A) 300 volts peak,

(B) A rate of change of one volt per microsecond, and

(C) A 60-volt level after 20 milliseconds.

(3) *Off premises station voltages.* (i) Talking battery or voltages applied by the PBX (or similar systems) to all classes of OPS interface leads for supervisory purposes must be negative with respect to ground, shall not be more than −56.5 volts dc with respect to ground, and shall not have a significant ac component.[1]

(ii) Ringing signals applied by the PBX (or similar systems) to all classes of OPS interface leads shall comply with requirements in paragraph (d) of this section. Ringing voltages shall be applied between the ring conductor and ground.

(4) *Direct Inward Dialing (DID).* Voltages applied by the PBX (or similar systems) to DID interface leads for supervisory purposes must be negative with respect to ground, shall not be more than −56.5 volts dc with respect to ground, and shall not have a significant ac component.[2]

(5) *Local Area Data Channel Interfaces.* For Local Area Data Channel interfaces, during normal operating modes including terminal equipment initiated maintenance signals, registered terminal equipment shall ensure, except during the application of ringing (limitations specified in paragraph (d) of this section), with respect to telephone connections (tip, ring, tip 1, ring 1) that:

(i) Under normal operating conditions, the rms current per conductor between short-circuit conductors, including dc and ac components, does not exceed 350 milliamperes. For other than normal operating conditions, the rms current between any conductor and ground or between short-circuited conductors, including dc and ac components, may exceed 350 milliamperes for no more than 1.5 minutes;

(ii) The dc voltage between any conductor and ground does not exceed 60 volts. Under normal operating conditions it shall not be positive with respect to ground (though positive voltages up to 60 volts may be allowed during brief maintenance states);

(iii) AC voltages are less than 42.4 volts peak between any conductor and ground, (terminal equipment shall comply while other interface leads are both):

(A) Unterminated, and

(B) Individually terminated to ground); and,

(iv) Combined ac and dc voltages between any conductor and ground are less than 42.4 volt peak when the absolute value of the dc component is less than 21.2 volts, and less than (32.8 + 0.454 × Vdc) when the absolute value of the dc component is between 21.2 and 60 volts.

(6) *Ringdown Voiceband Private Line and Voiceband Metallic Channel Interface.* During normal operation, registered terminal equipment for connection to ringdown voiceband private line interfaces or voiceband metallic channel interfaces shall ensure that:

(i) Ringing voltage does not exceed the voltage and current limits specified in paragraph (d) of this section, and is:

(A) Applied to the ring conductor with the tip conductor grounded for 2-wire interfaces, or

(B) Simplexed on the tip and ring conductors with ground simplexed on the tip 1 and ring 1 conductors for 4-wire interfaces.

(ii) Except during the signaling mode or for monitoring voltage, there is no significant positive dc voltage (not over +5 volts) with respect to ground:

(A) For 2-wire ports between the tip lead and ground and the ring lead and ground and

(B) For 4-wire ports between the tip lead and ground, the ring lead and ground, the tip 1 lead and ground, and the ring 1 lead and ground.

(iii) The dc current per lead, under short circuit conditions shall not exceed 140 milliamperes.

(b) *Connection of non-registered equipment to registered terminal equipment or registered protective circuitry.—General.* Leads to, or any elements having a conducting path to

[1] The ac component should not exceed 5 volts peak, when not otherwise controlled by § 68.308.

[2] The ac component shall not exceed 5 volts peak, where not otherwise controlled by § 68.308.

telephone connections, auxiliary leads or E&M leads shall:

(1) Be reasonably physically separated and restrained from and be neither routed in the same cable as nor use the same connector as leads or metallic paths connecting power connections;

(2) Be reasonably physically separated and restrained from and be neither routed in the same cable as nor use adjacent pins on the same connector as metallic paths to lead to nonregistered equipment, when specification details provided to the Commission, pursuant to, § 68.200(g), do not show that interface voltages are less than non-hazardous voltage source limits in paragraph (c) of this section.

(c) *Non-Hazardous Voltage Source.* A voltage source is considered a non-hazardous voltage source if it conforms with the requirements of § 68.302, § 68.304 and paragraph (b) of this section, with all connections to the source other than primary power connections treated as ''telephone connections,'' and if such source supplies voltages no greater than the following under all modes of operation and of failure:

(1) AC voltages less than 42.4 volts peak;

(2) DC voltages less than 60 volts; and

(3) Combined ac and dc voltages less than 42.4 volts peak when the absolute value of the dc component is less than 21.2 volts and less than (32.8 + 0.454 × V dc) when the absolute value of the dc component is between 21.2 and 60 volts.

(d) *Ringing Sources.* Except for class A OPS interfaces, ringing sources shall meet all of the following restrictions:

(1) *Ringing Signal Frequency.* The ringing signal shall use only frequencies whose fundamental component is equal to or below 70 Hz.

(2) *Ringing Signal Voltage.* The ringing voltage shall be less than 300 V peak-to-peak and less than 200 V peak-to-ground across a resistive termination of at least 1 megohm.

(3) *Ringing Signal Interruption Rate.* The ringing voltage shall be interrupted to create quiet intervals of at least one second (continuous) duration each separated by no more than 5 seconds. During the quiet intervals, the voltage to ground shall not exceed the voltage limits given in paragraph (a)(3)(i) of this section.

(4) *Ringing Signal Sources.* Ringing voltage sources shall comply with the following requirements:

(i) If the ringing current through a 500 ohm(s) (and greater) resistor does not exceed 100 mA peak-to-peak, neither a ring trip device nor a monitoring voltage are required.

(ii) If the ringing current through a 1500 ohm (and greater) resistor exceeds 100 mA peak-to-peak, the ringing source shall include a current-sensitive ring trip device in series with the ring lead that will trip ringing as specified in Figure 68.306(a) in accordance with the following conditions:

(A) If the ring trip device operates as specified in Figure 68.306(a) with R=500 ohm (and greater) no monitoring voltage is required;

(B) If, however, the ring trip device only operates as specified in Figure 68.306(a) with R=1500 ohm (and greater) then the ringing voltage source shall also provide a monitoring voltage between 19 V dc and 56.5 V dc, negative with respect to ground, on the tip or ring conductor.

(iii) If the ringing current through a 500-ohm (and greater) resistor exceeds 100 mA (peak-to-peak) but does not exceed 100 mA peak-to-peak with 1500-ohm (and greater) termination, the ringing voltage source shall include either a ring trip device that meets the operating characteristics specified in Figure 68.306(a) with 500-ohm (and greater) resistor, or a monitoring voltage as specified in paragraph (d)(4)(ii)(B) of this section.

Note to paragraph (d)(4)(iii): If the operating characteristics specified in Figure 68.306(a) are not met with both the 500-ohm and 1500-ohm terminations, then the terminal equipment under test fails (See Table 68.306(c)).

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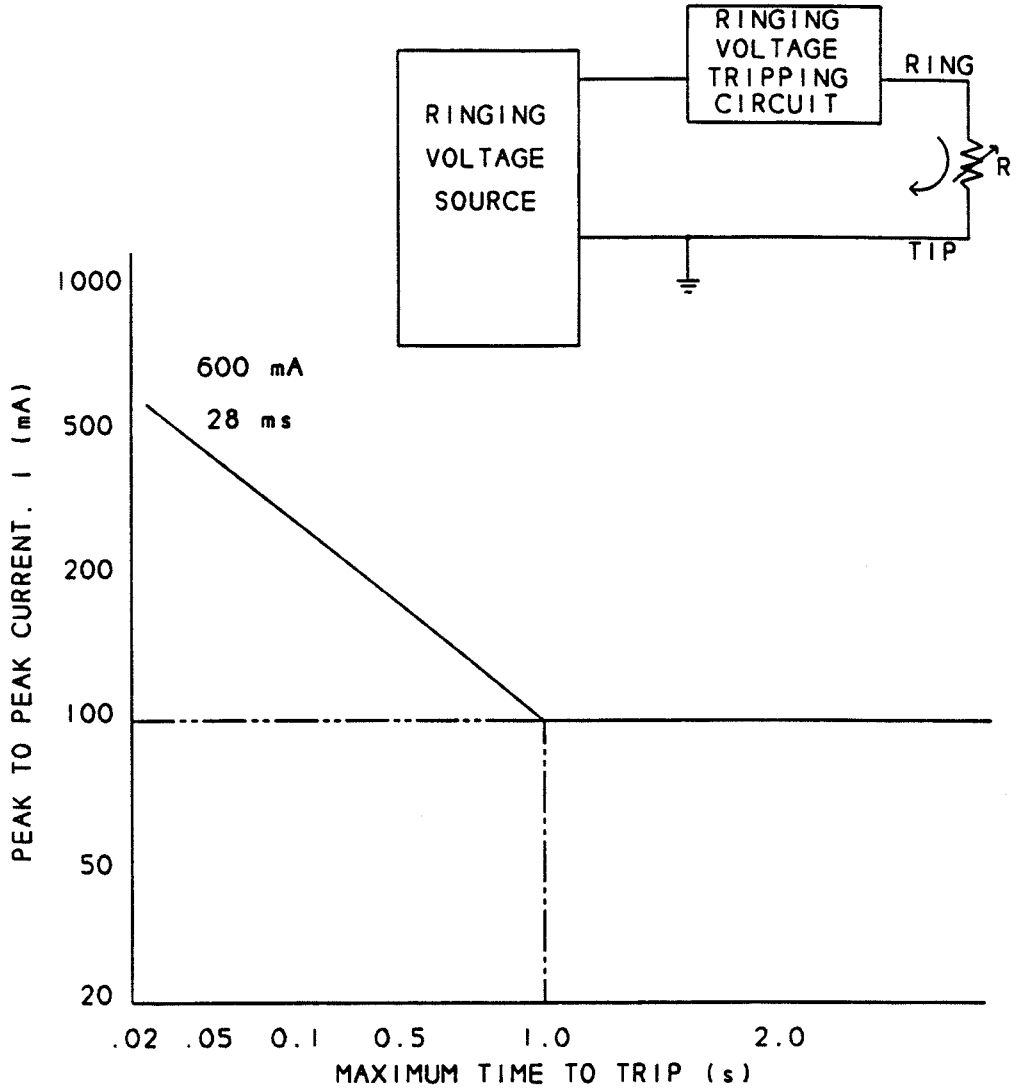

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TABLE 68.306(C).—SUMMARY OF RING TRIP REQUIREMENTS

Section 68.306 (d)(4).	Ringing current (mA p.p)		Function required		Ring trip device operates per figure 68.306(a)
	R=500 ohms and greater	R=1500 ohms and greater	Ring trip	Monitor voltage	
(i)	<100	<100	Optional	Optional	Optional.
(ii)(A)	N/A	>100	Yes	Optional	Yes for both resistances.
(ii)(B)	N/A	>100	Yes	Yes	Yes for R=1500 ohms and greater. No for R=500 ohms and greater.
(iii)	>100	<100	Either Ring-Trip device or Monitor Voltage required		Yes for R=500 ohms and greater, if Ring Trip Device is used.

(e) *Intentional paths to ground (as required by § 68.304).* (1) Connections with operational paths to ground. Registered terminal equipment and registered protective circuitry having an intentional dc conducting path to earth ground at operational voltages that was excluded during the leakage current test of § 68.304 shall have a dc current source applied between the following points:

(i) Telephone connections, including tip, ring, tip 1, ring 1, E&M leads and auxiliary leads, and

(ii) Earth grounding connections.

Note to paragraphs (e)(1)(i) and (e)(1)(ii): For each test point, gradually increase the current from zero to 1 ampere, then maintain the current for one minute. The voltage between (e)(2)(i) and (e)(2)(ii) of this section shall not exceed 0.1 volt at any time.

Note to paragraphs (e)(2)(i) and (e)(2)(ii):

(1) In the event there is a component or circuit in the path to ground, the requirement shall be met between the grounded side of the component or circuit and the earth grounding connection.

(2) Connections with protection paths to ground. Registered terminal equipment and protective circuitry having an intentional dc conducting path to earth ground for protection purposes at the leakage current test voltage that was removed [1] during the leakage current test of § 68.304 shall, upon its replacement, have a 50 or 60 Hz voltage source applied between the following points:

(i) Simplexed telephone connections, including tip and ring, tip 1 and ring 1, E&M leads and auxiliary leads, and

(ii) Earth grounding connections.

(3) Gradually increase the voltage from zero to 120 volts rms for registered terminal equipment, or 300 volts rms for protective circuitry, then maintain the voltage for one minute. The current between §§ 68.306(d)(4)(i) and 68.306(d)(4)(ii) shall not exceed 10 mA peak at any time. As an alternative to carrying out this test on the complete equipment or device, the test may be carried out separately on components, subassemblies, and simulated circuits, outside the unit, provided that the test results would be representative of the results of testing the complete unit.

[1] The path to ground is reestablished when the leads are replaced.

10. Section 68.308 is revised to read as follows:

§ 68.308 Signal power limitations.

(a) *General.* Limits on signal power shall be met at the interface for all 2-wire network ports and, where applicable to offered services, both transmit and receive pairs of all 4-wire network ports. Signal power measurements shall be made using terminations as specified in each of the following limitations. The transmit and receive pairs for 4-wire network ports shall be measured with the pair not under test connected to a termination equivalent to that specified for the pair under test. Through gain limitations apply only in the direction of transmission toward the network.

(b) *Voiceband metallic signal power.* (1) Limitations at the interface on internal signal sources not intended for network control signaling:

(i) The power of all signal energy, in the 200–3995 Hz voiceband, delivered by registered terminal equipment or registered protective circuitry to the appropriate loop simulator—other than non-permissive data equipment or data protective circuitry shall not exceed −9 dBm when averaged over any 3 second interval.

(ii) For 2-wire and 4-wire lossless tie trunk type interfaces, the maximum power of other than live voice signals delivered to a 600-ohm termination shall not exceed −15 dBm when averaged over any three second interval.

(iii) For OPS lines, the maximum power of other than live voice delivered to an OPS line simulator circuit shall not exceed −9 dB with respect to one milliwatt, when averaged over any 3-second interval.

(iv) For registered test equipment or registered test circuitry the maximum signal power delivered to a loop simulator circuit shall not exceed 0 dBm when averaged over any 3-second interval.

(v) For voiceband private lines using ringdown or inband signaling the maximum power of other than live voice signals delivered to a 600 ohm termination shall not exceed −13 dBm when averaged over any 3-second interval.

(vi) For voiceband private lines using inband signaling in the band 2600 ± 150 Hz, the maximum power delivered to a 600 ohm termination shall not exceed −8 dBm during the signaling mode. The maximum power delivered to a 600 ohm termination in the on-hook steady state supervisory condition shall not exceed −20 dBm. The maximum power of other than live voice signals delivered to a 600 ohm termination during the non-signaling mode and for other inband systems shall not exceed −13 dBm when averaged over any 3-second interval.

(2) Limitations on internal signal sources primarily intended for network control signaling, contained in voice and data equipment.

(i) For all operating conditions of registered terminal equipment and registered protective circuitry, the maximum power in the frequency band below 3995 Hz delivered to a loop simulator circuit shall not exceed the following when averaged over any 3-second interval:

(A) 0 dBm when used for network control (DTMF);

(B) 0 dBm when DTMF is used for manual entry end-to-end signaling. When the device is used for this purpose it shall not generate more than 40 DTMF digits per manual key stroke.

(C) −9 dBm in all other cases.

(ii) For tie trunk applications, the maximum power delivered to a 600 ohm termination for registered terminal equipment and registered protective circuitry under all operating conditions shall not exceed −4 dBm over any 3 second interval.

(3) Registered one port and multiport terminal equipment and protective circuitry with provision for through transmission from other terminal equipment, excluding data equipment and data protective circuitry that are registered in accordance with § 68.308(b)(4).

(i) Where through-transmission equipment provides a dc electrical signal to equipment connected therewith (*e.g.*, for powering of electro-acoustic transducers), dc conditions shall be provided which fall within the range of conditions provided by a loop simulator circuit unless the combination of the through-transmission equipment and equipment connected therewith is registered as a combination which conforms to paragraphs (b)(1) and (b)(2) of this section.

(ii) Through-transmission equipment to which remotely connected data terminal equipment may be connected shall not be equipped with or connected to either a Universal or Programmed Data Jack used in data configurations. (*See* paragraph (b)(4) of this section and § 68.502(e)).

(4) Registered data circuit terminal equipment shall be capable of operation in at least one of the states discussed in paragraphs (b)(1)(i), (b)(1)(ii) or (b)(1)(iii) of this section. The output power level of the data circuit terminal equipment shall not be alterable, by the customer, to levels which exceed the signal power limits specified herein.

(i) Data circuit terminal equipment intended to operate with a programming resistor for signal level control shall not exceed the programmed levels given in Table 68.308(a).

(ii) Data circuit terminal equipment intended to operate in the fixed loss loop (FLL) state shall not transmit signal power that exceeds −4 dBm, in the 200—3995 Hz voiceband, when averaged over any and all 3 second intervals.

(iii) Data circuit terminal equipment shall not transmit signals from 200 to 3995 Hz that exceed −9 dBm, when averaged over any and all 3 second intervals.

TABLE 68.308(a)

Programming resistor (Rp)* (ohms)	Programmed data equipment signal power output
Short	0 dBm.
150	−1 dBm.
336	−2 dBm.
569	−3 dBm.
866	−4 dBm.
1240	−5 dBm.
1780	−6 dBm.
2520	−7 dBm.
3610	−8 dBm.
5490	−9 dBm.

*Tolerance) 1%.

(5) Registered one-port and multiport terminal equipment and protective circuitry with provision for through-transmission from ports to other equipment which is separately registered for the public switched network, or ports to other network interfaces.

(i) Registered terminal equipment and registered protective circuitry shall have no adjustments that will allow net amplification to occur in either direction of transmission in the through-transmission path within the 200–3995 Hz voiceband that will exceed the following:

TABLE 68.308(b).—ALLOWABLE NET AMPLIFICATION BETWEEN PORTS (A)(C)(D)(E)

To / From (E)	Tie trunk type ports: 2/4-wire	Tie trunk type ports: Subrate 1.544 Mbps satellite 4W	Tie trunk type ports: Subrate 1.544 Mbps tandem 4W	Integrated services trunk	OPS ports (2-wire) (B)	Public switched network ports (2-wire)	HCC digital PBX–CO 4-wire
2/4-Wire Tie	0 dB	3 dB	3 dB	3 dB	6 dB		
Subrate 1.544 Mbps Satellite 4W Tie	0 dB		3 dB	3 dB	6 dB		
Subrate 1.544 Mbps Tandem 4W Tie	−3 dB	0 dB	0 dB	0 dB	3 dB		
Integrated Services Trunk	−3 dB	0 dB	0 dB	0 dB	3 dB		
RTE Digital	0 dB	0 dB	0 dB	0 dB	3 dB	3 dB	0 dB.
RTE (B) PSTN/OPS	−3 dB	−3 dB	−3 dB	−3 dB	0 dB	0 dB	−3 dB
OPS (B) (2-Wire)	−2 dB	1 dB	1 dB	1 dB	4 dB	4 dB	1 dB.
Public Switched Network (2-Wire)					3 dB	3 dB	
HCC Digital PBX–CO (4-Wire)					3 dB		

(A) The source impedance for all measurements shall be 600 ohms. All ports shall be terminated in appropriate loop or private line channel simulator circuits or 600 ohm terminations.

(B) These ports are for 2-wire on-premises station ports to separately registered terminal equipment.

(C) These through gain limitations are applicable to multiport systems where channels are not derived by time or frequency compression methods. Terminal equipment employing such compression techniques shall assure that equivalent compensation for through gain parameters is demonstrated in the registration application.

(D) Registered terminal equipment and registered protective circuitry may have net amplification exceeding the limitations of this subsection provided that, for each network interface type to be connected, the absolute signal power levels specified in this section are not exceeded.

(E) The indicated gain is in the direction that results when moving from the horizontal entry toward the vertical entry.

(F) Registered terminal equipment or protective circuitry with the capability for through transmission from voiceband private line channels or voiceband metallic channels to other telephone network interfaces shall ensure that the absolute signal power levels specified in this section, for each telephone network interface type to be connected, are not exceeded.

(G) Registered terminal equipment or protective circuitry with the capability for through transmission from voiceband private line channels or voiceband metallic private line channels to other telephone network interfaces shall assure, for each telephone network interface type to be connected, that signals with energy in the 2450 to 2750 Hz band are not through transmitted unless there is at least an equal amount of energy in the 800 to 2450 Hz band within 20 milliseconds of application of signal.

(ii) The insertion loss in through connection paths for any frequency in the 800 to 2450 Hz band shall not exceed the loss at any frequency in the 2450 to 2750 Hz band by more than 1 dB (maximum loss in the 800 to 2450 Hz band minus minimum loss in the 2450 to 2750 Hz band plus 1 dB).

(6) For tie trunk interfaces—Limitation on idle circuit stability parameters. For idle state operating conditions of registered terminal equipment and registered protective circuitry, the following limitations shall be met:

(i) For the two-wire interface:

$$RL \geq \begin{cases} 9 - 3^{\frac{\log(f/200)}{\log(2.5)}} \text{ dB; for } 200 \text{ Hz} \leq f \leq 500 \text{ Hz} \\ 6 \text{ dB} \quad \text{; for } 500 \text{ Hz} \leq f \leq 3200 \text{ Hz} \end{cases}$$

(ii) For the four-wire lossless interface:

$$t1_f \geq \begin{cases} 10 - 4^{\frac{\log(f/200)}{\log(2.5)}} \text{ dB; for } 200 \text{ Hz} \leq f \leq 500 \text{ Hz} \\ 6 \text{ dB} \quad \text{; for } 500 \text{ Hz} \leq f \leq 3200 \text{ Hz} \end{cases}$$

$$t1_r > 40 \text{ dB}$$

$$RL_i, RL_o \geq 3 \text{dB}$$

Note: The following definitions apply to return loss requirements:

RL the return loss of 2-wire terminal equipment at the interface with respect to 600 ohms+2.16 µF (*i.e.,* Z_{ref}=600 ohms+2.16 µF).

$$RL \triangleq 20 \log_{10} \frac{Z_{PBX} + Z_{ref}}{Z_{PBX} - Z_{ref}}$$

Rl_i the terminal equipment input (receive) port return loss with respect to 600 ohms (*i.e.,* Z_{ref}=600 ohms).

$$RL_i \triangleq 20 \log_{10} \frac{Z_{PBX(input)} + Z_{ref}}{Z_{PBX(input)} - Z_{ref}}$$

RL_o the terminal equipment output (transmit) port return loss with respect to 600 ohms (*i.e.,* Z_{ref}=600 ohms).

$$RL_o \triangleq 20 \log_{10} \frac{Z_{PBX(output)} + Z_{ref}}{Z_{PBX(output)} - Z_{ref}}$$

tl the transducer loss between the receive and transmit ports of the 4-wire PBX. tl_f is the transducer loss in the *forward* direction from the *receive* port to the *transmit* port of the PBX.

$$t1_f \triangleq 20 \log_{10} \frac{I_i}{I_r}$$

Where I_i is the current sent into the *receive* port and I_r is the current received at the *transmit* port terminated at 600 ohms.

tl_r is the transducer loss in the *reverse* direction, from the *transmit* port to the *receive* port of the PBX.

$$t1_r \triangleq 20 \log_{10} \frac{I_i}{I_r}$$

Where I_i is the current sent into the *transmit* port and I_r is the current received at the *receive* port terminated at 600 ohms. Note, the source impedance of I_i is 600 ohms.

(7) Registered terminal equipment and registered protective circuitry shall provide the following range of dc conditions to off-premises station (OPS) lines.

(i) DC voltages applied to the OPS interface for supervisory purposes and during network control signaling shall meet the limits specified in § 68.306(a)(3)(i).

(ii) DC voltages applied to the OPS interface during the talking state shall meet the following requirements:

(A) The maximum open circuit voltage across the tip (T(OPS)) and ring (R(OPS)) leads for all classes shall not exceed 56.5 volts, and

(B) Except for class A OPS interfaces, the maximum dc current into a short circuit across tip (T(OPS)) and ring (R(OPS)) leads shall not exceed 140 mA.

(8) For connections to 1.544 Mbps digital services, the permissible code words for unequipped Mu-255 encoded subrate channels are limited to those corresponding to signals of either polarity, of magnitude equal to or less than X48, where code word, XN is derived by:

XN = (255 – N) base 2

– XN = (127 – N) base 2

(c) Signal power in the 3995–4005 Hz frequency band.

(1) Power resulting from internal signal sources contained in registered protective circuitry and registered terminal equipment (voice and data), not intended for network control signaling. For all operating conditions of registered terminal equipment and registered protective circuitry that incorporate signal sources other than sources intended for network control signaling, the maximum power delivered by such sources in the 3995–4005 Hz band to an appropriate simulator circuit, shall be 18 dB below maximum permitted power specified in paragraph (b) of this section for the voiceband.

(2) Terminal equipment with provision of through-transmission from other equipment. The loss in any through-transmission path of registered terminal equipment and registered protective circuitry at any frequency in the 600 to 4000 Hz band shall not exceed, by more than 3 dB, the loss at any frequency in the 3995 to 4005 Hz band, when measured into an appropriate simulator circuit from a source that appears as 600 ohms across tip and ring.

(d) Longitudinal voltage at frequencies below 4 kHz. The weighted rms voltage [3] averaged over 100 milliseconds that is resultant of all of the component longitudinal voltages in the 100 Hz to 4 kHz band after weighting according to the transfer

[3] Average magnitudes may be used for signals that have peak-to-rms ratios of 20 dB and less. The rms limitations must be used instead of average values if the peak-to-rms ratio of the interfering signal exceeds this value.

function of f/4000 where f is the frequency in Hertz, shall not exceed the maximum indicated under the conditions stated in paragraph (g) of this section.

Frequency range	Maximum weighted rms voltage	Impedance
100 Hz to 4 kHz	−30 dBV	500 ohms.

(e) Voltage in the 4 kHz to 6 MHZ frequency range-general case—2-wire and 4-wire lossless interface (except LADC). Except as noted, rms voltage as averaged over 100 milliseconds at the telephone connections of registered terminal equipment and registered protective circuitry in all of the possible 8 kHz bands within the indicated frequency range and under the conditions specified in paragraph (g) of this section shall not exceed the maximum indicated below. For paragraphs(e)(1) and (e)(2)(i) of this section, ''f'' is the center frequency in kHz of each of the possible 8-kHz bands beginning at 8 kHz.

(1) Metallic Voltage. 4 kHz to 270 kHz:

Center frequency (f) of 8 kHz band	Max voltage in all 8 kHz bands	Metallic terminating impedance
8 kHz to 12 khz	−(6.4 + 12.6 log f) dBV	300 ohms.
12 kHz to 90 kHz	.....	135 ohms.
90 kHz to 266 kHz	(23–40 log f) dBV −55	135 ohms.

(2) Longitudinal voltage.

(i) 4 kHz to 270 kHz.

(ii) 270 kHz to 6 MHZ. The rms value of the longitudinal voltage components in the frequency range of 270 kHz to 6 MHZ, shall not exceed −30 dBV. This limitation applies with a longitudinal termination having an impedance of 90 ohms.

Center frequency (f) of 8 kHz band	Max voltage in all 8 kHz bands	Longitudinal terminating impedance
8 kHz to 12 kHz	−(18.4 + 20 log f) dBV	500 ohms
12 kHz to 42 kHz	.....	90 ohms
42 kHz to 266 kHz (2−40 log f) dBV −62 dBV	.....	90 ohms

(f) *LADC interface.* The metallic voltage shall comply with the general requirements in paragraph (f)(1) of this section as well as the additional requirements specified in paragraphs (f)(2) and (f)(3) of this section. The requirements apply under the conditions specified in paragraph (g) of this section. Terminal equipment for which the magnitude of the source and/or terminating impedance exceeds 300 ohms, at any frequency in the range of 100 kHz to 6 MHz, at which the signal (transmitted and/or received) has significant power, shall be deemed not to comply with these requirements. A signal is considered to have ''significant power'' at a given frequency if that frequency is contained in a designated set of frequency bands that collectively have the property that the rms voltage of the signal components in those bands is at least 90% of the rms voltage of the total signal. The designated set of frequency bands must be used in testing all frequencies.

(1) Metallic voltages—frequencies below 4 kHz.

(i) Weighted rms voltage in the 10 Hz to 4 kHz frequency band. The weighted rms metallic voltage in the frequency band from 10 Hz to 4 kHz, averaged over 100 milliseconds that is the resultant of all the component metallic voltages in the band after weighting according to the transfer function of f/4000 where f is the frequency in Hertz, shall not exceed the maximum indicated below under the conditions stated in paragraph (g) of this section.

Frequency range	Maximum voltage
10 Hz to 4 kHz	+3 dBV.

(ii) RMS Voltage in 100 Hz bands in the frequency range 0.7 kHz to 4 kHz. The rms metallic voltage averaged over 100 milliseconds in the 100-Hz bands having center frequencies between 750 Hz and 3950 Hz shall not exceed the maximum indicated below.

Center freq (f) of 100-Hz bands	Max voltage in all 100-Hz bands
750 to 3950 Hz	−6 dBV.

(2) Metallic Voltages—frequencies above 4 kHz—LADC interface.

(i) 100-Hz bands over frequency range of 4 kHz to 270 kHz. The rms voltage as averaged over 100 milliseconds in all possible 100-Hz bands between 4 kHz and 270 kHz for the indicated range of center frequencies and under the conditions specified in paragraph (g) of this section shall not exceed the maximum indicated below:

Center freq (f) of all 100-Hz bands	Max voltage in all 100-Hz bands
4.05 kHz to 4.6 kHz	0.5 dBV.
4.60 kHz to 5.45 kHz	(59.2—90 log f) dBV.
5.45 kHz to 59.12 kHz	(7.6—20 log f) dBV.
59.12 kHz to 266.00 kHz	(43.1—40 log f) dBV.

Where f = center frequency in kHz of each of the possible 100 Hz bands.

(ii) 8-kHz bands over frequency range of 4 kHz to 270 kHz. The rms voltage as averaged over 100 milliseconds in all of the possible 8-kHz bands between 4 kHz and 270 kHz for the indicated range of center frequencies and under the conditions specified in paragraph (g) of this section shall not exceed the maximum indicated below:

Center freq (f) of 8-kHz bands	Max voltage in all 8-kHz bands
8 kHz to 120 kHz	(17.6—20 log f) dBV.
120 kHz to 266 kHz ..	(59.2—40 log f) dBV.

Where f = center frequency in kHz of each of the possible 8-kHz bands.

(iii) RMS Voltage at frequencies above 270 kHz. The rms value of the metallic voltage components in the frequency range of 270 kHz to 6 MHZ, averaged over 2 microseconds, shall not exceed -15 dBV. This limitation applies with a metallic termination having an impedance of 135 ohms.

(iv) Peak Voltage. The total peak voltage for all frequency components in the 4 kHz to 6 MHZ band shall not exceed 4.0 volts.

(3) Longitudinal voltage. Frequencies below 4kHz: The weighted rms voltage in the frequency band from 10 Hz to 4 kHz,averaged over 100 milliseconds is the resultant of all the component longitudinal voltages in the band after weighing according to the transfer function of f/4000, where f is the frequency in Hz, shall not exceed the maximum indicated below under the conditions stated in paragraph (g) of this section.

(i) Frequencies below 4 kHz. The weighted rms voltage in the frequency band from 10 Hz to 4 kHz,averaged over 100 milliseconds is the resultant of all the component longitudinal voltages in the band after weighing according to the transfer function of f/4000, where f is the frequency in Hz, shall not exceed the maximum indicated below under the conditions stated in paragraph (g) of this section.

Frequency range	Maximum RMS voltage
10 Hz–4 kHz	−37 dBV.

(ii) 4 kHz to 270 kHz.

Ctr freq (f) of 8 kHz bands	Max voltage in all 8 kHz bands	Longitudinal terminating impedance
8 to 12 kHz	−(18.4+20 log f) dBV	500 ohms.
12 to 42 kHz	(3–40 log f) dBV	90 ohms
42 to 266 kHz	−62 dBV	90 ohms.

Where f = center frequency in kHz of each of the possible 8-kHz bands.

(iii) 270 kHz to 6 MHZ. The rms value of the longitudinal voltage components in the frequency range of 270 kHz to 6 MHZ shall, averaged over 2 microseconds, not exceed −30 dBV. This limitation applies with a longitudinal termination having an impedance of 90 ohms.

(d) Longitudinal voltage at frequencies below 4 kHz. The weighted rms voltage[4] averaged over 100 milliseconds that is resultant of all of the component longitudinal voltages in the 100 Hz to 4 kHz band after weighting according to the transfer function of f/4000 where f is the frequency in Hertz, shall not exceed the maximum indicated under the conditions stated in § 68.308(g).

Frequency range	Maximum weighted rms voltage	Impedance
100 Hz to 4 kHz	−30 dBV	500 ohms.

(e) *Voltage in the 4 kHz to 6 MHZ frequency range—general case—2-wire and 4-wire lossless interface (except LADC).* Except as noted, rms voltage as averaged over 100 milliseconds at the telephone connections of registered terminal equipment and registered protective circuitry in all of the possible 8 kHz bands within the indicated frequency range and under the conditions specified in paragraph (g) of this section shall not exceed the maximum indicated below. For paragraph (e)(1) and paragraph (e)(2)(i) of this section, ''f'' is the center frequency in kHz of each of the possible 8-kHz bands beginning at 8 kHz.

(1) Metallic Voltage. 4 kHz to 270 kHz:

Center frequency (f) of 8 kHz band	Max voltage in all 8 kHz bands	Metallic terminating impedance
8 kHz to 12 kHz	−(6.4 + 12.6 log f) dBV	300 ohms.
12 kHz to 90 kHz	(23–40 log f) dBV	135 ohms.
90 kHz to 266 kHz	−55 dBV	135 ohms.

(2) Longitudinal voltage

(i) 4 kHz to 270 kHz.

(ii) 270 kHz to 6 MHZ. The rms value of the longitudinal voltage components in the frequency range of 270 kHz to 6 MHZ, shall not exceed −30 dBV. This limitation applies with a longitudinal termination having an impedance of 90 ohms.

Center frequency (f) of 8kHz band	Max voltage in all 8 kHz bands	Longitudinal terminating impedance
8 kHz to 12 kHz	−(18.4 + 20 log f) dBV	500 ohms.
12 kHz to 42 kHz	(2–40 log f) dBV	90 ohms.

[4] Average magnitudes may be used for signals that have peak-to-rms ratios of 20 dB and less. The rms limitations must be used instead of average values if the peak-to-rms ratio of the interfering signal exceeds this value.

Center frequency (f) of 8kHz band	Max voltage in all 8 kHz bands	Longitudinal terminating impedance
42 kHz to 266 kHz	−62 dBV	90 ohms.

(f) *LADC interface.* The metallic voltage shall comply with the general requirements in paragraph (f)(1) of this section as well as the additional requirements specified in paragraphs (f)(2) and (3) of this section as stated. The requirements apply under the conditions specified in § 68.308(g). Terminal equipment for which the magnitude of the source and/or terminating impedance exceeds 300 Ohms, at any frequency in the range of 100 kHz to 6 MHz, at which the signal (transmitted and/or received) has significant power, shall be deemed not to comply with these requirements. A signal is considered to have ''significant power'' at a given frequency if that frequency is contained in a designated set of frequency bands that collectively have the property that the rms voltage of the signal components in those bands is at least 90% of the rms voltage of the total signal. The designated set of frequency bands must be used in testing all frequencies.

(1) Metallic voltages—frequencies below 4 kHz.

(i) Weighted rms voltage in the 10 Hz to 4 kHz frequency band. The weighted rms metallic voltage in the frequency band from 10 Hz to 4 kHz, averaged over 100 milliseconds that is the resultant of all the component metallic voltages in the band after weighting according to the transfer function of f/4000 where f is the frequency in Hertz, shall not exceed the maximum indicated below under the conditions stated in paragraph (g).

Frequency range	Maximum voltage
10 Hz to 4 kHz	+3 dBV.

(ii) RMS Voltage in 100 Hz bands in the frequency range 0.7 kHz to 4 kHz. The rms metallic voltage averaged over 100 milliseconds in the 100-Hz bands having center frequencies between 750 Hz and 3950 Hz shall not exceed the maximum indicated below.

Center freq (f) of 100-Hz bands	Max voltage in all 100-Hz bands
750 to 3950 Hz	−6 dBV.

(2) Metallic Voltages—frequencies above 4 kHz—LADC interface.

(i) 100-Hz bands over frequency range of 4 kHz to 270 kHz. The rms voltage as averaged over 100 milliseconds in all possible 100-Hz bands between 4 kHz and 270 kHz for the indicated range of center frequencies and under the conditions specified in § 68.308(g) shall not exceed the maximum indicated below:

Center freq (f) of all 100-Hz bands	Max voltage in all 100-Hz bands
4,05 kHz to 4.6 kHz	0.5 dBV.
4.60 kHz to 5.45 kHz	(59.2–90 log f) dBV.
5.45 kHz to 59.12 kHz	(7.6–20 log f) dBV.
59.12 kHz to 266.00 kHz	(43.1–40 log f) dBV.

Where f = center frequency in kHz of each of the possible 100 Hz bands.

(ii) 8-kHz bands over frequency range of 4 kHz to 270 kHz. The rms voltage as averaged over 100 milliseconds in all of the possible 8-kHz bands between 4 kHz and 270 kHz for the indicated range of center frequencies and under the conditions specified in § 68.308(g) shall not exceed the maximum indicated below:

Center freq (f) of 8-kHz bands	Max voltage in all 8-kHz bands
8 kHz to 120 kHz	(17.6–20 log f) dBV.
120 kHz to 266 kHz	(59.2–40 log f) dBV.

Where f = center frequency in kHz of each of the possible 8-kHz bands.

(iii) RMS Voltage at frequencies above 270 kHz. The rms value of the metallic voltage components in the frequency range of 270 kHz to 6 MHZ, averaged over 2 microseconds, shall not exceed −15 dBV. This limitation applies with a metallic termination having an impedance of 135 ohms.

(iv) Peak Voltage. The total peak voltage for all frequency components in the 4 kHz to 6 MHZ band shall not exceed 4.0 volts.

(3) Longitudinal voltage.

(i) Frequencies below 4kHz. The weighted rms voltage in the frequency band from 10 Hz to 4kHz, averaged over 100 milliseconds is the resultant of all the component longitudinal voltages in the band after weighing according to the transfer function of f/4000, where f is the frequency in Hz, shall not exceed the maximum indicated below under the conditions stated in § 68.308(g).

Frequency range	Maximum RMS voltage
10 Hz–4 kHz	−37 dBV.

(ii) 4 kHz to 270 kHz

Center freq (f) of 8-kHz bands	Max voltage in all 8-kHz bands	Longitudinal terminating Voltage
8 kHz to 12 kHz	−(18.4 + 20 log f) dBV	500 ohms.
12 kHz to 42 kHz	(3–20 log f) dBV	90 ohms.
42 kHz to 266 kHz	−62 dBV	90 ohms

Where f = center frequency in kHz of each of the possible 8-kHz bands.

(iii) 270 kHz to 6 MHZ. The rms value of the longitudinal voltage components in the frequency range of 270 kHz to 6 MHZ shall, averaged over 2 microseconds, not exceed -30 dBV. This limitation applies with a longitudinal termination having an impedance of 90 ohms.

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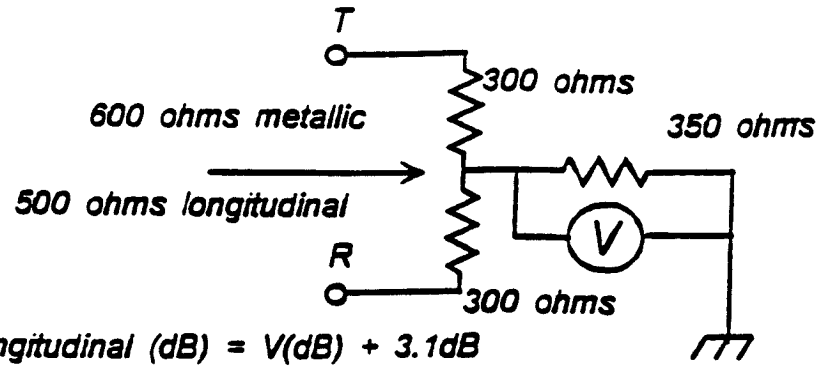
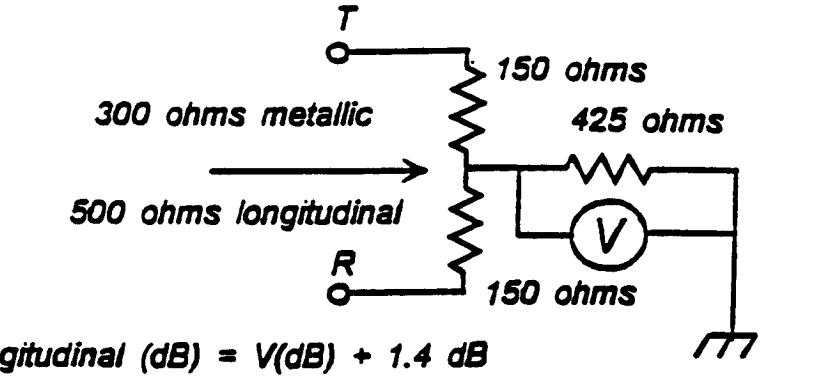
Frequencies below 4 kHz



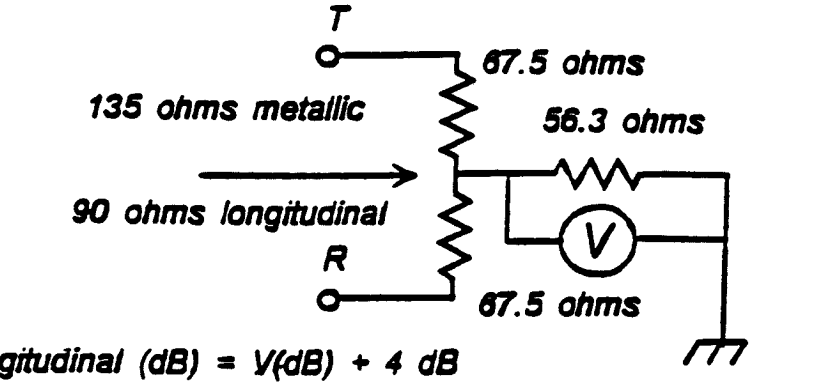
V longitudinal (dB) = V(dB) + 3.1dB

8 kHz Band Center Frequencies between 4 and 12 kHz



V longitudinal (dB) = V(dB) + 1.4 dB

8 kHz Band Center Frequencies above 12 kHz and up to 6 MHz



V longitudinal (dB) = V(dB) + 4 dB

RESISTIVE TERMINATIONS
METALLIC RETURN

Figure 68.308(a)

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(g) *Requirements in paragraphs (d), (e) and (f) of this section apply under the following conditions:* (1) All registered terminal equipment, except equipment to be used on LADC, and all registered protective circuitry must comply with the limitations when connected to a termination equivalent to the circuit depicted in Figure 68.308(a) and when placed in all operating states of the equipment except during network control signaling. LADC registered terminal equipment must comply with the metallic voltage limitations when connected to circuits of § 68.3(i) and must comply with the longitudinal limitations when connected to circuits of Figure 68.308(a), as indicated.

(2) All registered terminal equipment and registered protective circuitry must comply with the limitations in the off-hook state over the range of loop currents that would flow with the equipment *connected* to an appropriate simulator circuit.

(3) Registered terminal equipment and registered protective circuitry with provision for through-transmission from other equipments shall comply with the limitations with a 1000 Hz tone applied from a 600-ohm source (or, if appropriate a source which reflects a 600-ohm impedance across tip and ring) at the maximum level that would be applied during normal operation. Registered protective circuitry for data shall also comply with the tone level 10 dB higher than the overload point.

(4) For registered terminal equipment or registered protective circuitry with non-registered signal source input, such as music on hold, the out of band signal power requirements shall be met using an input signal with a frequency range of 200 Hz to 20 kHz and the level set at the overload point.

(5) Except during the transmission of ringing (§ 68.306(d)) and Dual Tone Multi-frequency (DTMF) signals, LADC registered terminal equipment shall comply with all requirements in all operating states and with loop current that may be drawn for such purposes as loop back signaling. The requirements in paragraph (f)(1) of this section except in paragraphs (f)(1)(i) and (f)(1)(ii) of this section also apply during the application of ringing. The requirement in paragraph (d) and the requirements in paragraphs (f)(1)(i) and (f)(1)(ii) of this section apply during ringing for frequencies above 300 Hz and with the maximum voltage limits raised by 10 dB. DTMF signals which are used for the transmission of alphanumeric information and which comply with the requirements in paragraph (f)(1)(i) and in paragraphs (f)(2) or (f)(3) of this section as applicable, shall be deemed to comply with the requirements in paragraph (f)(1)(ii) of this section provided that, for automatically originated DTMF signals, the duty cycle is less than 50 percent.

(6) LADC registered terminal equipment shall comply with all applicable requirements, except those specified in paragraphs (f)(1) (i) and (ii) of this section, during the transmission of each possible data signal sequence of any length. For compliance with paragraph (f)(3)(i) of this section, the limitation applies to the rms voltage averaged as follows:

(i) For digital signals, baseband or modulated on a carrier, for which there are defined signal element intervals, the rms voltage is averaged over each such interval. Where multiple carriers are involved, the voltage is the power sum of the rms voltages for the signal element intervals for each carrier.

(ii) For baseband analog signals, the rms voltage is averaged over each period (cycle) of the highest frequency of the signal (3 dB point on the spectrum). For analog signals that are modulated on a carrier (whether or not the carrier is suppressed), it is averaged over each period (cycle) of the carrier. Where multiple carriers are involved, the voltage is the power sum of the rms voltage for each carrier.

(iii) For signals other than the types defined in paragraphs (g)(6)(i) and (ii) of this section, the peak amplitude of the signal must not exceed +1 dBV.

(7) Equipment shall comply with the requirements in paragraphs (f)(1)(i) and (ii) of this section, during any data sequence that may be transmitted during normal use with a probability greater than 0.001. If the sequences transmitted by the equipment are application dependent, the user instruction material shall include a statement of any limitations assumed in demonstrating compliance of the equipment.

(8) In addition to the conditions specified in paragraph (g)(5) of this section, LADC registered terminal equipment which operates in one or more modes as a receiver, shall comply with requirements in paragraph (f)(3) of this section with a tone at all frequencies in the range of potential received signals and at the maximum power which may be received.

(h) *Interference limitations for transmission of bipolar signals over digital services.*—(1) *Limitations on Terminal Equipment Connection to Subrate Digital Services*—(i) *Pulse repetition rate.* The pulse repetition rate shall be synchronous with 2.4, 3.2, 4.8, 6.4, 9.6, 12.8, 19.2, 25.6, 38.4, 56.0, or 72 kbps per second.

(ii) *Template for maximum output pulse.* When applied to a 135 Ohm resistor, the instantaneous amplitude of the largest isolated output pulse obtainable from the registered terminal equipment shall not exceed by more than 10% the instantaneous voltage defined by a template obtained as follows: The limiting pulse template shall be determined by passing an ideal 50% duty cycle rectangular pulse with the amplitude/pulse rate characteristics defined in Table 68.308(c) through a single real pole low pass filter having a cutoff frequency in Hertz equal to 1.3 times the bit rate. For bit rates of 2.4, 3.2, 4.8, 6.4, 9.6 and 12.8 kbps, the filtered pulses shall also be passed through a filter providing the additional attenuation in Table 68.308(d).

TABLE 68.308(c).—DRIVING PULSE AMPLITUDE

Line rate (kbps)	User data rate (R) (kbps)	Amplitude (A) (volts)
2.4	2.4	1.66
3.2	2.4 with SC [1]	1.66
4.8	4.8	1.66
6.4	4.8 with SC [1]	1.66
9.6	9.6	0.83
12.8	9.6 with SC [1]	0.83
19.2	19.2	1.66
25.6	19.2 with SC [1]	1.66
38.4	38.4	1.66
51.2	38.4 with SC [1]	1.66
56	56	1.66
72	56 with SC [1]	1.66
72	64	1.66

[1] SC: Secondary Channel.

TABLE 68.308(d).—MINIMUM ADDITIONAL ATTENUATION

Line rate (R) (kbps)	Attenuation in frequency band 24–32 kHz (dB)	Attenuation in frequency band 72–80 kHz (dB)
2.4	5	1
3.2	5	1
4.8	13	9
6.4	13	9
9.6	17	8
12.8	17	8

Note: The attenuation indicated may be reduced at any frequency within the band by the weighting curve of Table 68.308(e). Minimum rejection is never less than 0 dB; i.e., the weight does not justify gain over the system without added attenuation.

TABLE 68.308(e).—ATTENUATION CURVE

24–32 kHz band	72–80 kHz band	Attenuation factor dB
24	72	−18

TABLE 68.308(e).—ATTENUATION CURVE—Continued

24–32 kHz band	72–80 kHz band	Attenuation factor dB
25	73	−3
26	74	−1
27	75	0
29	76	0
29	77	0
30	78	−1
31	79	−3
32	80	−18

(iii) *Average power.* The average output power when a random signal sequence, (0) or (1) equiprobable in each pulse interval, is being produced as measured across a 135 ohm resistance shall not exceed 0 dBm for 9.6 and 12.8 kbps or +6 dBm for all other rates shown in Table 68.308(b).

(iv) *Encoded analog content.* If registered terminal equipment connecting to subrate services contains an analog-to-digital converter, or generates signals directly in digital form that are intended for eventual conversion into voiceband analog signals, the encoded analog content of the digital signal must be limited. The maximum equivalent power of encoded analog signals for other than live voice as derived by a zero level decoder test configuration shall not exceed −12 dBm when averaged over any 3-second time interval. The maximum equivalent power of encoded analog signals as derived by a zero level decoder test configuration for signals intended for network control signaling shall not exceed −3 dBm when averaged over any 3-second interval.

(2) *Limitations on Terminal Equipment Connecting to 1.544 Mbps Digital Services.*—(i) *Pulse repetition rate:* The free running line rate of the transmit signal shall be 1.544 Mbps with a tolerance of ±32 ppm., *i.e.*, ±50 bps.

(ii) *Output pulse templates.* The registered terminal equipment shall be capable of optionally delivering three sizes of output pulses. The output pulse option shall be selectable at the time of installation.

(A) *Option A output pulse.* When applied to a 100 ohm resistor, the instantaneous amplitude of the largest output pulse obtainable from the registered terminal equipment shall fall within the pulse template illustrated in Figure 68.308b). The mask may be positioned horizontally as needed to encompass the pulse, and the amplitude of the normalized mask may be uniformity scaled to encompass the pulse. The baseline of the mask shall coincide with the pulse baseline.

(B) *Option B output pulse.* When applied to a 100-ohm resistor, the instantaneous amplitude of the output from the registered terminal equipment obtained when Option B is implemented shall fall within the pulse template obtained by passing the bounding pulses permitted by Figure 68.308(b) through the following transfer function.

$$\frac{V_{out}}{V_{in}} = \frac{n_2 S^2 + n_1 S + n_0}{d_3 S^3 + d_2 S^2 + d_1 S + d_0}$$

where:

$n_0 = 1.6049 \times 10^{6}$

$n_1 = 7.9861 \times 10^{-1}$

$n_2 = 9.2404 \times 10^{-8}$

$d_0 = 2.1612 \times 10^{6}$

$d_1 = 1.7223$

$d_2 = 4.575 \times 10^{-7}$

$d_3 = 3.8307 \times 10^{-14}$

$S = j\,2\,\Pi\,f$

f=frequency (Hertz)

(C) *Option C output pulse.* When applied to a 100-ohm resistor, the instantaneous amplitude of the output from the registered terminal equipment obtained when Option C is implemented shall fall within the pulse template obtained by passing the pulses obtained in Option B through the transfer function in Option B a second time.

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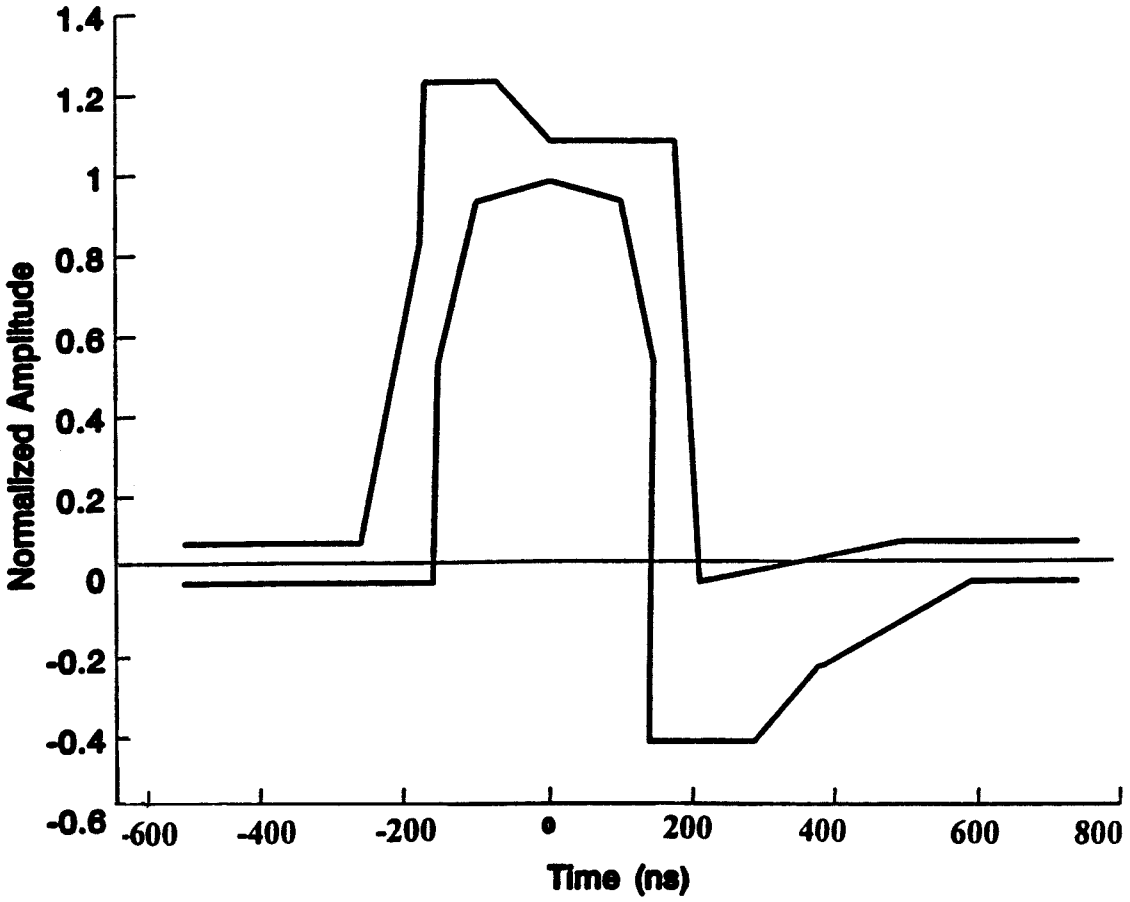

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MAXIMUM CURVE

Nano-seconds	−500	−250	−175	−175	−75	0	175	220	500	750
Normalized Amplitude	.05	.05	.8	1.2	1.2	1.05	1.05	−.05	.05	.05

MINIMUM CURVE

Nano-seconds	−500	−150	−150	−100	0	100	150	150	300	396	600	750
Normalized Amplitude	−.05	−.05	.5	.9	.95	.9	.5	−.45	−.45	−.26	−.05	−.05

Figure 68.308(b) (Ref. EIA/TIA 547–1989)—Isolated Pulse Template and Corner Points for 1.544 Mbps Equipment

Note to Figure 68.308(b): The pulse amplitude is 2.4 to 3.6 V. (Use constant scaling factor to fit normalized template.)

(iii) *Adjustment of signal voltage.* The signal voltage at the network interface must be limited so that the range of pulse amplitudes received at the first telephone company repeater is controlled to ±4 dB. This limitation is achieved by implementing the appropriate output pulse option as a function of telephone company cable loss as specified at time of installation.

Cable loss at 772 kHz (dBV)	Terminal equipment	
	Output pulse	Loss at 772 kHz
15 to 22	Option A	0
7.5 to 15	Option B	7.5
0 to 7.5	Option C	15

(iv) *Output power.* The output power in a 3 kHz band about 772 kHz when an all ones signal sequence is being produced as measured across a 100 ohm terminating resistance shall not exceed +19 dBm. The power in a 3 kHz band about 1.544 MHz shall be at least 25 dB below that in a 3 kHz band about 772 kHz.

(v) *Encoded Analog Content.* If registered terminal equipment connected to 1.544 Mbps digital service contains an analog-to-digital converter, or generates signals directly in digital form that are intended for eventual conversion into voiceband analog signals, the encoded analog content of the subrate channels within the 1.544 Mbps signal must be limited. The maximum equivalent power of encoded analog signals for other than live voice that are not intended for network

control signaling as derived by a zero level decoder test configuration shall not exceed −12 dBm when averaged over any 3-second time interval. The maximum equivalent power of encoded analog signals as derived by a zero level decoder test configuration for signals intended for network control signaling shall not exceed −3 dBm when averaged over any 3-second interval.

11. Section 68.310 is revised to read as follows:

§ 68.310 Transverse balance limitations.

(a) *Technical description and application.* The Transverse $Balance_{m-1}$, coefficient is expressed as

$$BALANCE_{m-1} = 20 \log_{10} \frac{e_M}{e_L}$$

(1) Where e_L is the longitudinal voltage produced across a longitudinal termination Z_1 and e_M is the metallic voltage across the tip-ring or tip 1 and ring 1 interface of the input port when a voltage (at any frequency between f_1 and $<f_2$, see Table 68.310(a) is applied from a balanced source with a metallic impedance Z_0 (see Table 68.310(a). The source voltage should be set such that e_M = E volts (see Table 68.310(a) when a termination of Z_0 is substituted for the terminal equipment.

(2) The minimum transverse balance coefficient specified in this section (as appropriate) shall be equalled or exceeded for all 2-wire network ports, OPS line ports and the transmit pair (tip and ring) and receive pair (tip 1 and ring 1) of all 4-wire network ports at all values of dc loop current that the port under test is capable of drawing when attached to the appropriate loop simulator circuit (See § 68.3). An illustrative test circuit that satisfies the above conditions is shown in Figure 68.310–1(a) for analog and 68.310–1(b) for digital and subrate; other means may be used to determine the transverse balance coefficient specified herein, provided that adequate documentation of the appropriateness, precision, and accuracy of the alternative means is provided by the applicant.

(3) The minimum transverse balance requirements specified below shall be equalled or exceeded under all reasonable conditions of the application of earth ground to the equipment or protective circuitry under test.

TABLE 68.310(a)

	Analog voiceband	Subrate digital	1.544 Mbps digital
Longitudinal Termination—Z_l	500 ohms	See Table 310(b)	90 ohms.
Metallic Source Impedance—Z_0	600 ohms	135 ohms	100 ohms.
Lower Frequency—f_1	200 Hz	200 Hz	10 kHz.
Upper Frequency—f_2	4 kHz	(1)	1.544 MHz.
Metallic Voltage for Test—E	0.775 V	0.367 V	0.316 V.

[1] The upper frequency equals the digital line rate for the subrate service under test (See Table 68.310(b)).

(b) *Analog voiceband equipment.* All registered analog voiceband equipment shall be tested in the off-hook state. The minimum transverse balance requirement in the off-hook state shall be 40 dB, throughout the range of frequencies specified in Table 68.310(a). For some categories of equipment, additional requirements also apply to the on-hook state. When both off-hook and on-hook requirements apply, they are:

State	Frequency (f)	Balance
Off-hook	200 Hz ≤ f ≤ 4000 Hz	40 dB.
On-hook	200 Hz ≤ f ≤ 1000 Hz	60 dB.
On-hook	1000 Hz ≤ f ≤ 4000 Hz.	40 dB.

(1) For analog one-port 2-wire terminal equipment with loop-start, ringdown, or inband signaling or for voiceband metallic channel applications, both off-hook and on-hook requirements apply.

(2) For analog one port equipment with ground-start and reverse-battery signaling only off-hook requirements apply.

(3) For analog registered protective circuitry for 2-wire applications with loop-start, ringdown, or inband signaling; or for voiceband metallic channel applications, both off-hook and on-hook requirements apply. Criteria shall be met with either terminal of the interface to other equipment connected to earth ground. The interface to other equipment shall be terminated in an impedance that will be reflected to the telephone connection as 600 Ohms in the off-hook state of the registered protective circuit, and the interface should not be terminated in the on-hook state. Figure 68.310(b) shows the interface of the protective circuitry being tested and the required arrangement at the interface to other equipment.

(4) For analog registered protective circuitry with ground-start and reverse-battery signaling only off-hook requirements apply. Criteria shall be met with either terminal of the interface to other equipment connected to earth ground. The interface to other equipment shall be terminated in an impedance that will be reflected to the telephone connection as 600 ohms in the off-hook state of the registered protective circuit. Figure 68.310(b) shows the interface of the protective circuitry under test and the required arrangement at the interface to the other equipment.

(5) For analog multi-port equipment with loop-start signaling both off-hook and on-hook requirements apply. Criteria shall be satisfied for all ports when all the ports not under test are terminated in their appropriate networks, as will be identified below, and when interface connections other than the ports are terminated in circuits appropriate to that interface. The minimum transverse balance coefficients shall also be satisfied for all values of dc loop current that the registered equipment is capable of drawing through each of its ports when these ports are attached to the loop simulator circuit specified in these rules. The termination for all ports other than the particular one whose transverse balance coefficient is being measured shall have a metallic impedance of 600 ohms.

(6) For analog multi-port equipment with ground-start and reverse-battery signaling, only off-hook requirements apply. Criteria shall be satisfied for all ports when all ports not under test are terminated in their appropriate networks as will be identified below, and when interface connections other than the ports are terminated in circuits appropriate to that interface. The minimum transverse balance coefficients shall be satisfied for all values of dc loop current that the registered equipment is capable of drawing through each of its ports when these ports are attached to the loop simulator circuit specified in these rules. The terminations for all ports

other than the particular one whose transverse balance coefficient is being measured shall have a metallic impedance of 600 ohms and a longitudinal impedance of 500 ohms. Figure 68.310(c) shows this termination.

(7) For analog registered terminal equipment and protective circuitry for 4-wire network ports, both the off-hook and on-hook requirements apply. The pair not under test shall be terminated in a metallic impedance of 600 ohms. Other conditions are as follows:

(i) For analog registered protective circuitry with loop-start, ground-start, reverse battery, ringdown, or inband signaling; or for voiceband metallic channel applications. Criteria shall be met with either terminal of the interface to other equipment connected to earth ground. The interface to other equipment shall be terminated in an impedance that will result in 600 ohms at each of the transmit and receive pairs of the 4-wire telephone connection in the off-hook state of the registered protective circuit, and the interface should not be terminated in the on-hook state. Figure 68.310(d) shows the interface of the protective circuitry being tested and the required arrangement at the interface to other equipment.

(ii) For analog multiport equipment with loop start, ground start, and reverse battery, ringdown, or inband signaling; or for voiceband metallic channel applications. Criteria shall be satisfied for all network ports when all the ports not under test are terminated as defined below, and when interface connections other than the network ports are terminated in circuits appropriate to the interface. The criteria shall also be satisfied for all values of dc loop current that when the port is connected to the appropriate 4-wire loop simulator circuit. The terminations for both pairs of all network ports not under test shall have a metallic impedance of 600 ohms and a longitudinal impedance of 500 ohms. Figure 68.310(c) shows this termination.

(8) For analog PBX equipment (or similar systems) with class B or class C off-premises interfaces, only off-hook requirements apply. Criteria shall be satisfied for all off-premises station interface ports when these ports are terminated in their appropriate networks for their off-hook state, and when all other interface connections are terminated in circuits appropriate to that interface. The minimum transverse balance coefficients shall also be satisfied for all values of dc loop current that the registered PBX is capable of providing through off-premises station ports when these ports are attached to the off-premises line simulator circuit specified in these rules.

(9) For Type Z equipment with loop-start signaling, both off-hook and on-hook requirements apply. Equipment that has on-hook impedance characteristics which that do not conform to the requirements of § 68.312 (*e.g.,* Type Z), shall comply with minimum transverse balance requirements of 40 dB in the voiceband. *See* § 68.312(h) for conditions upon registration of ''Type Z'' equipment.

(c) *Digital equipment.* The minimum transverse balance requirements for registered terminal equipment connected to digital services shall be equalled or exceeded for the range of frequencies applicable for the equipment under test and under all reasonable conditions of the application of earth ground to the equipment. All such terminal equipment shall have a transverse balance in the acceptable region of Figure 68.310(e) for the range of frequencies shown in Table 68.310(b) for the specified digital service in question. The metallic impedance used for the transverse balance measurements for all subrate services shall be 135 ohms and for 1.544 Mbps shall be 100 ohms. The longitudinal termination for 1.544 Mbps and subrate services shall be as defined in Table 68.310(b).

FREQUENCY RANGES OF TRANSVERSE BALANCE REQUIREMENTS FOR DIGITAL SERVICES

Digital service	Frequency range	Longitudinal termination (ohms)	Metallic termination (ohms)
2.4	200 to 2.4 kHz	500	135
3.2	200 to 3.2 kHz	500	135
4.8	200 to 4.8 kHz	500	135
6.4	200 to 6.4 kHz	500	135
9.6	200 to 9.6 kHz	500	135
12.8[1]	200 to 12.8 kHz	500/90	135
19.2[1]	200 to 19.2 kHz	500/90	135
25.6[1]	200 to 25.6 kHz	500/90	135
38.4[1]	200 to 38.4 kHz	500/90	135
56[1]	200 to 56 kHz	500/90	135
72[1]	200 to 72 kHz	500/90	135
1.544	10 kHz to 1.544 MHz	90	100

[1] For 200 to 12 kHz the longitudinal termination shall be 500 ohms and above 12 kHz the longitudinal termination shall be 90 ohms.

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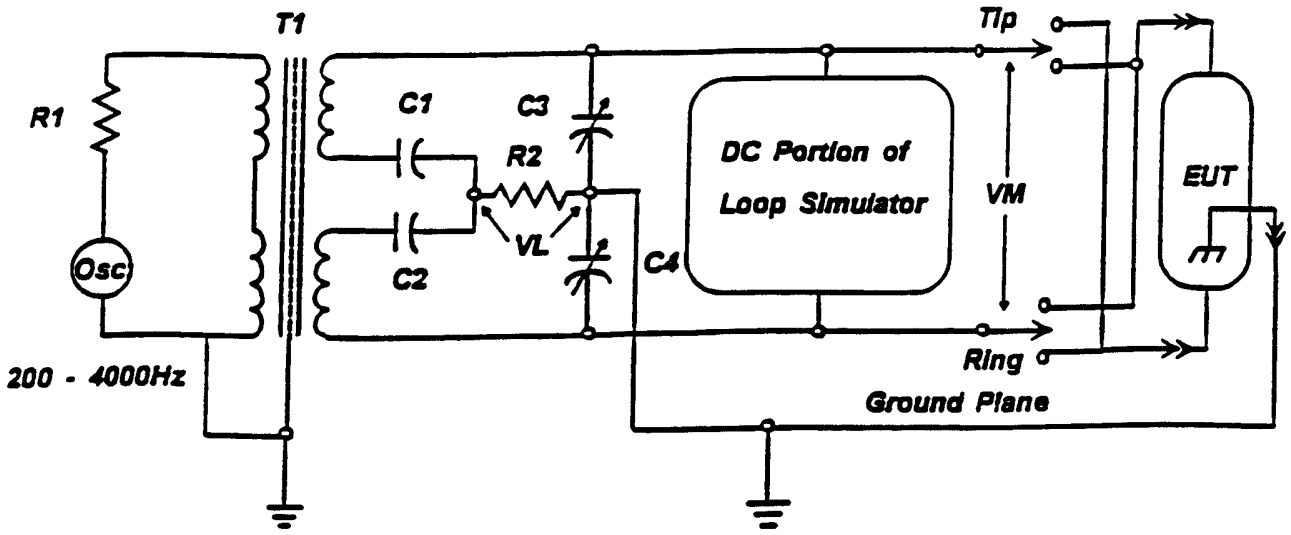
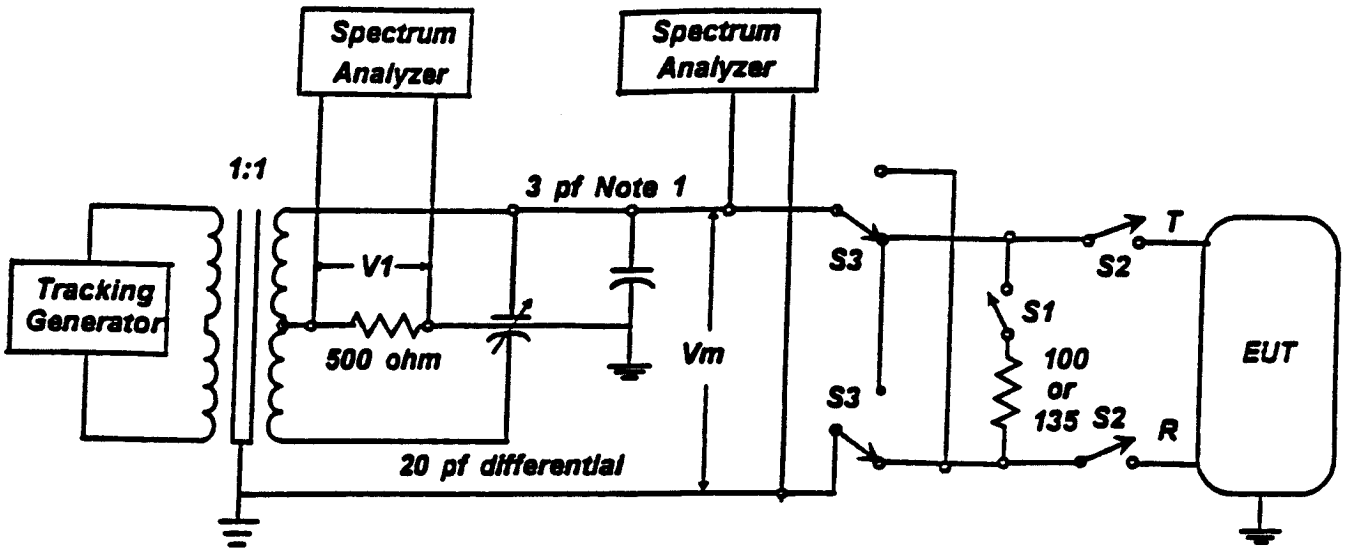


Figure 68.310-1(a)
Illustrative Test Circuit for Transverse Balance (Analog)

T_1 600 ohms:600 ohms split audio transformer
C_1, C_2 8 mF, 400 V dc, matched to within 0.1 %
C_3, C_4 100 to 500 pF adjustable trimmer capacitors
Osc. Audio oscillator with source resistance R_1 less than or equal to 600 ohms
R_1 Selected such that $Z_{osc} + R_1 = 600$ ohms
R_2 500 ohms

NOTES:
1. V_M should not be measured at the same time as V_L
2. Use trimmer capacitors C_3 and C_4 to balance the test circuit to 20 dB greater balance than the equipment standard for all frequencies specified, with a 600 ohm resistor substituted for the equipment under test.
3. Exposed conductive surfaces on the exterior of the equipment under test should be connected to the ground plane for this test.
4. When the Terminal Equipment makes provision for an external connection to ground (G), the Terminal Equipment shall be connected to ground. When the Terminal Equipment makes no provision for an external ground, the Terminal Equipment shall be placed on a ground plane which is connected to ground and has overall dimensions at least 50 % greater than the corresponding dimensions of the Terminal Equipment. The Terminal Equipment shall be centrally located on the ground plane without any additional connection to ground.

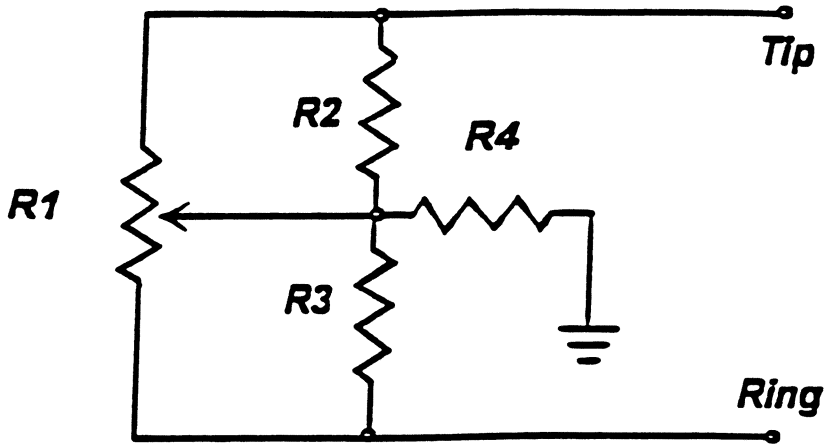


Notes:

1. The 3 pF capacitor may be placed on either line of the test set, as required, to obtain proper balancing of the bridge.
2. Use an R_{CAL} value of 100 ohms for 1.544 Mbps devices and 135 ohms for subrate devices.
3. The effective output impedance of the tracking generator should match the appropriate test impedance. See Note 2.The spectrum analyzer's input must be differentially balanced to measure V_m.
4. R_2 should be chosen according to Table 68.310(b).

T_1: 100 ohms:100 ohms C.T. wide band transformer
12.4 to 24.5 pF differential trimmer
R_2 = Z_1 from Table 68.310(a)
R_{CAL}, Z_0 from Table 68.310(a)
R_1- Selected so that R_1 + 50 ohms = Z_0 from Table 68.310(a)

Figure 68.310-1(b)
Illustrative Test Circuit for Transverse Balance (Digital)



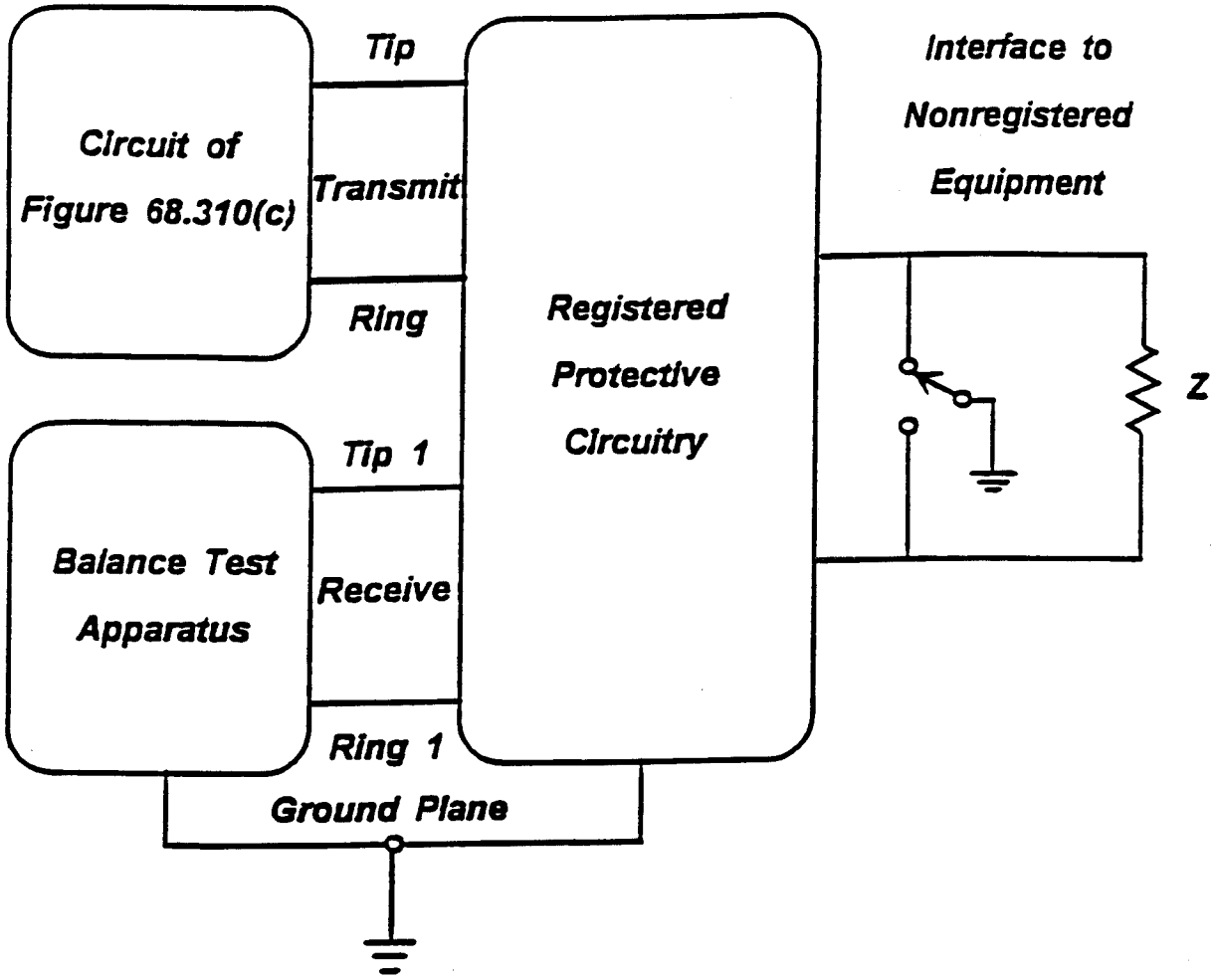
Where: $R_2 = R_3 = 300$ ohms, $R_4 = 350$ ohms, $R_1 = 300$ k ohms, for analog voiceband

$R_2 = R_3 = 67.5$ ohms, $R_4 = 56.3$ ohms, $R_1 = 100$ kohms, for subrate digital

$R_2 = R_3 = 50$ ohms, $R_4 = 65$ ohms, $R_1 = 100$ k ohms, for 1.544 Mbps

R_1 is used to adjust termination balance. Balance of this termination shall be adjusted to at least 60 dB between 200 and 1000 Hz, and at least 40 dB between 1000 and 4000 Hz, and to at least 35 dB at 1.544 MHZ.

Figure 68.310(C)
Off-Hook Termination of Multiport Equipment for Ports Not under Test



Z *Selected so that the reflected impedance at tip 1 and ring 1 is 600 Ω, 135 Ω, or 100 Ω depending on service type of EUT.*

Configuration shown is for measurement of receive pair.

Figure 68.310(d)
Required Termination for Connections to Non-Registered Equipment

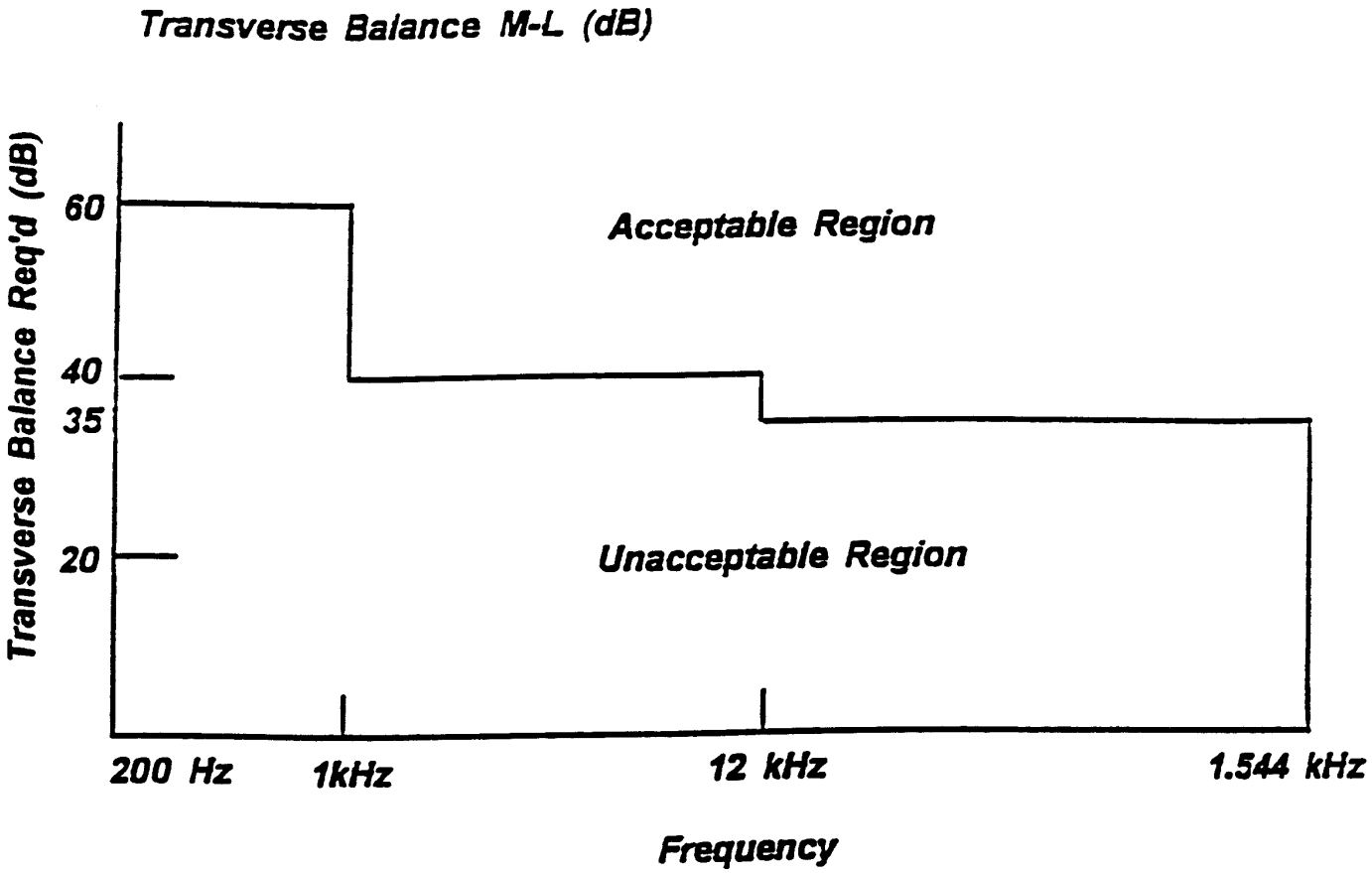


Figure 68.310(e)
Transverse Balance Requirements for Digital Services

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12. Section 68.312 is revised to read as follows:

§ 68.312 On-hook impedance limitations.

(a) *General.* Requirements in this section apply to the tip and ring conductors of 2-wire interfaces. These requirements also apply to 4-wire loop-start or ground-start interfaces, in the following configuration:

(1) The tip and ring conductors are connected together and treated as one of the conductors of a tip and ring pair.

(2) The tip 1 and ring 1 conductors are connected together and treated as the other conductor of a tip and ring pair.

Note to § 68.312: Throughout this section, references will be made to simulated ringing. Ringing voltages to be used and impedance limitations associated with simulated ringing are shown in Table 68.312(a).

TABLE 68.312(a)

Ringing type	Range of compatible ringing frequencies (Hz)	Simulated ringing voltage superimposed on 56.5 volts dc	Impedance limitations (ohms)
A	20±3	40 to 130 volts rms	1400
	30±3	40 to 130 volts rms	1000
B	15.3 to 34	40 to 130 volts rms	1600
	>34 to 49	62 to 130 volts rms	1600
	>49 to 68	62 to 150 volts rms	1600

(b) *Limitations on individual equipment intended for operation on loop-start telephone facilities.* Registered terminal equipment and registered protective circuitry shall conform to the following limitations:

(1) *On-hook resistance, metallic and longitudinal (up to 100 Vdc).* The on-hook dc resistance between the tip and ring conductors of a loop start interface, and between each of the tip and ring conductors and earth ground, shall be greater than 5 megohms for all dc voltages up to and including 100 volts.

(2) *On-hook resistance, metallic and longitudinal (100 V to 200 Vdc).* The on-hook dc resistance between tip and ring conductors of a loop start interface, and between each of the tip and ring conductors and earth ground shall be greater than 30 kOhms for all dc voltages between 100 and 200 volts.

(3) *DC current during ringing.* During the application of simulated ringing, as listed in Table 68.312(a), to a loop start interface, the total dc current shall not exceed 3.0 milliamperes. The equipment must comply for each ringing type which is listed as part of the ringer equivalence.

(4) *Ringing frequency impedance (metallic).* During the application of simulated ringing, as listed in Table 68.312(a), to a loop start interface, the impedance between the tip and ring conductors (defined as the quotient of applied ac voltage divided by resulting true rms current) shall be greater than or equal to the value specified in Table 68.312(a). The equipment must comply for each ringing type which is listed as part of the ringer equivalence.

(5) *Ringing Frequency Impedance (longitudinal).* During the application of simulated ringing, as listed in Table 68.312(a), to a loop start interface, the impedance between each of the tip and ring conductors and ground shall be greater than 100 kohms. The equipment must comply with each ringing type listed in the ringer equivalence.

(c) *Limitations on individual equipment intended for operation on ground start telephone facilities.* Registered terminal equipment and registered protective circuitry shall conform to the following limitations:

(1) *DC current during ringing.* During the application of simulated ringing, as listed in Table 68.312(a), to a ground start interface, the total dc current flowing between tip and ring conductors shall not exceed 3.0 milliamperes. The equipment must comply for each ringing type listed as part of the ringer equivalence.

(2) *Ringing frequency impedance (metallic).* During the application of simulated ringing, as listed in Table 68.312(a), to a ground start interface, the total impedance of the parallel combination of the ac impedance across tip and ring conductors and the ac impedance from the ring conductor to ground (with ground on the tip conductor) shall be greater than the value specified in Table 68.312(a). The equipment must comply for each ringing type listed as part of the ringer equivalence.

(d) *Ringer Equivalence Definition.* The ringer equivalence number is defined to be the value determined in paragraphs (d)(1) or (d)(2) of this section, as appropriate, followed by the ringer type letter indicator representing the frequency range for which the number is valid. If Ringer Equivalence is to be stated for more than one Ringing Type, testing shall be performed at each frequency range to which Ringer Equivalence is to be determined in accordance with the above, and the largest resulting Ringer Equivalence Number so determined will be associated with each Ringing Type letter designation for which it is valid.

(1) For individual equipment intended for operation on loop-start telephone facilities, the ringer equivalence is five times the impedance limitation listed in Table 68.312(a), divided by the minimum measured ac impedance, as defined in paragraph (b)(1)(iv) of this section, during the application of simulated ringing as listed in Table 68.312(a).

(2) For individual equipment intended for operation on ground-start telephone facilities, the ringer equivalence is five times the impedance limitation listed in Table 68.312(a), divided by the minimum measured ac impedance, defined in paragraph (c)(2) of this section, during the application of simulated ringing as listed in Table 68.312(a).

(e) *Ringer equivalence number labeling.* Registered terminal equipment and registered protective circuitry shall have at least one Ringer Equivalence Number shown on the registration label. Where options that will vary the Ringer Equivalence are involved, either each option that results in a Ringer Equivalence Number greater than 0.1 and its corresponding Ringer Equivalence shall be listed on the registration label, or the largest Ringer Equivalence Number that can result from such options shall be stated on the label. A trained, authorized agent of the Grantee may disconnect ringers, bridge ringers to another line, or execute options affecting Ringer Equivalence after the telephone company has been notified in accordance with § 68.106.

(f) *Maximum ringer equivalence.* All registered terminal equipment and registered protective circuitry that can affect the ringing frequency impedance shall be assigned a Ringer Equivalence. The sum of all such Ringer Equivalences

on a given telephone line or loop shall not exceed 5. In some cases, a system that has a total Ringer Equivalence of 5 or less may not be usable on a given telephone line or loop.

(g) *OPS interfaces for PBX with DID (Ring trip requirement).* PBX ringing supplies whose output appears on the off-premises interface leads shall not trip when connected to the following tip-to-ring impedance that terminates the off-premises station loop: A terminating impedance composed of the parallel combination of a 15 kohms resistor and an RC series circuit (resistor and capacitor) whose ac impedance is as specified in Table 68.312(b) below.

TABLE 68.312(b)

Ringing freq Hz	ac impedance ohms	
	Class B or C	Class A
20 ± 3	7000/N	1400
30 ± 3	5000/N	1000

N—Number of ringer equivalences, as specified by the manufacturer, which can be connected to the off-premises station loop.

(h) *Type Z Ringers.* Equipment that has on-hook impedance characteristics which do not conform to the requirements of this section may be conditionally registered, notwithstanding the requirements of this section, provided that it is labeled with a Ringing Type designation ''Z''. It should be noted that registration of equipment bearing the designation ''Z'' does not necessarily confer any right of connection to the telephone network under these rules. Any equipment registered with the type Z designation may only be used with the consent of the local telephone company, provided that the local telephone company does not discriminate in its treatment of equipment bearing the type Z designation.

(i) *Transitioning to the Off-Hook State.* Registered terminal equipment and registered protective circuitry shall not by design leave the on-hook state by operations performed on tip and ring leads for any other purpose than to request service or answer an incoming call, except that terminal equipment that the user places in the off-hook state for the purpose of manually placing telephone numbers in internal memory for subsequent automatic or repertory dialing shall be registerable. Make-busy indications shall be transmitted by the use of make-busy leads only as defined in § 68.3 and § 68.200(j).

13. Section 68.314 is revised to read as follows:

§ 68.314 Billing protection.

(a) *Call duration requirements on data equipment connected to the public switched network, or to tie trunks, or to private lines that access the public switched network.* Registered data terminal equipment and registered protective circuitry shall comply with the following requirements when answering an incoming call, except in off-hook states in which the signals are transmitted and/or received by electroacoustic transducers only.

Note to paragraph (a) of this section: This paragraph is applicable to terminal equipment and registered protective circuitry employed with digital services where such digital services are interconnected with the analog telephone network.

(1) *Registered protective circuitry.* Registered protective circuitry connected to associated data equipment shall assure that the following signal power limitations are met for at least the first 2 seconds after the off-hook condition is presented to the telephone network in response to an incoming call:

(i) Signals that appear at the protective circuitry/telephone network interface for delivery to the telephone network shall be limited to -55 dBm, (at any frequency in the range of 200 to 3200 Hertz), as such signals are delivered into a loop simulator circuit or a 600 ohm termination, as appropriate; and

(ii) Signals that appear at the protective circuitry-associated data equipment interface for delivery to associated data equipment shall be limited as follows: for any received signal power (appearing at the protective circuitry-telephone network interface) up to 0 dB with respect to one milliwatt (at any frequency in the range of 200 to 3200 Hertz), the power of signals delivered to associated data equipment shall be no greater than the signal power that would be delivered as a result of received signal power of -55 dBm.

(2) *Registered terminal equipment.* Registered terminal equipment for data applications shall assure that, when an incoming telephone call is answered, the answering terminal equipment prevents both transmission and reception of data for at least the first two seconds after the answering terminal equipment transfers to the off-hook condition. For the purpose of this requirement, a fixed sequence of signals that is transmitted (and originated within) and/or received by the registered terminal equipment each time it answers an incoming call shall not be considered data, provided that such signals are for one or more of the following purposes:

(i) Disabling echo control devices,

(ii) Adjusting automatic equalizers and gain controls,

(iii) Establishing synchronization, or

(iv) Signaling the presence and if required, the mode of operation, of the data terminal at the remote end of a connection.

(b) *Voice and data equipment on-hook signal requirements for equipment connected to the public switched network, or to tie trunks, or to private lines that access the public switched network.* Registered protective circuitry and registered terminal equipment shall comply with the following:

(1) The power delivered into a 2-wire loop simulator circuit or into the transmit and receive pairs of a 4-wire loop simulator or into a 600 ohm termination (where appropriate) in the on-hook state, by loop-start or ground-start equipment shall not exceed −55 dBm within the voiceband. Registered protective circuitry shall also assure that for any input level up to 10 dB above the overload point, the power to a 2-wire loop simulator circuit or the transmit and receive pairs of a 4-wire loop simulator circuit or into a 600 ohm termination (where appropriate) does not exceed the above limits.

(2) The power delivered into a 2-wire loop simulator circuit or into the transmit and receive pairs of a 4-wire loop simulator circuit, in the on-hook state, by reverse battery equipment shall not exceed −55 dBm, unless the equipment is arranged to inhibit incoming signals.

(c) *Voice and data equipment loop current requirements for equipment connected to the public switched network.* The loop current through registered terminal equipment or registered protective circuitry, when connected to a 2-wire or 4-wire loop simulator circuit with the 600 ohm resistor and 500 microfarad capacitor of the 2-wire loop simulator circuit or both pairs of the 4-wire loop simulator circuit disconnected shall, for at least 5 seconds after the equipment goes to the off-hook state that would occur when answering an incoming call:

(1) Be at least as great as the current obtained in the same loop simulator circuit with minimum battery voltage and a maximum loop resistance when a 200 ohm resistance is connected across the tip and ring of the 2-wire loop simulator circuit or connected across the tip/ring and tip 1/ring 1 conductors (tip and ring connected together and tip 1 and ring 1 connected together) of the 4-wire loop simulator circuit in place of

the registered terminal equipment or registered protective circuitry; or

(2) Not decreased by more than 25 percent from its maximum value attained during this 5-second interval; unless the equipment is returned to the on-hook state during the above 5 second interval.

(3) The above requirements also apply in the hold state and any off-hook state.

(d) *Signaling interference requirements.* (1) The signal power delivered to the network interface by the registered terminal equipment and from signal sources internal to registered protective circuitry in the 2450 Hz to 2750 Hz band shall be less than or equal to the power present simultaneously in the 800 Hz to 2450 Hz band for the first 2 seconds after going to the off-hook state.

(2) Registered terminal equipment for connection to subrate or 1.544 Mbps digital services shall not deliver digital signals to the telephone network with encoded analog content energy in the 2450 to 2750 Hertz band unless at least an equal amount of encoded analog energy is present in the 800 to 2450 Hertz band for the first two seconds after going to the off-hook state.

(e) *On-hook requirements for registered terminal equipment for connection to subrate and 1.544 Mbps digital services.* Registered terminal equipment and registered protective circuitry shall comply with the following:

(1) The power delivered to the telephone network in the on-hook state as derived by a zero level decoder shall not exceed −55 dBm equivalent power for digital signals within the voiceband.

(2) Registered protective circuitry shall also assure that the power to a zero level decoder does not exceed the above limits for any input level up to 10 dB above the overload point.

(3) Reverse battery interface. The power derived by a zero level decoder, in the on-hook state, by reverse battery equipment, shall not exceed −55 dBm, unless the equipment is arranged to inhibit incoming signals.

(f) *Off hook requirements.* Off-hook signal requirements for registered terminal equipment connecting to 1.544 Mbps digital services. Upon entering the normal off-hook state, in response to alerting, for subrate channels, registered terminal equipment shall continue to transmit the signaling bit sequence representing the off-hook state for 5 seconds, unless the equipment is returned to the on-hook state during the above 5-second interval.

(g) *Operating requirements for direct inward dialing.* (1) For registered terminal equipment, the off-hook state shall be applied within 0.5 seconds of the time that:

(i) The terminal equipment permits the acceptance of further digits that may be used to route the incoming call to another destination.

(ii) The terminal equipment transmits signals towards the calling party, except for the call progress tones, *i.e.*, busy, reorder and audible ring, and the call is:

(A) Answered by the called, or another station;

(B) Answered by the attendant;

(C) Routed to a customer controlled or defined recorded announcement, except for ''number invalid,'' ''not in service'' or ''not assigned;''

(D) Routed to a dial prompt; or

(E) Routed back to the public switched telephone network or other destination and the call is answered. If the status of the answered call cannot be reliably determined by the terminal equipment through means such as, detection of answer supervision or voice energy, removal of audible ring, etc., the off-hook state shall be applied after an interval of not more than 20 seconds from the time of such routing. The off-hook state shall be maintained for the duration of the call.

(2) For registered protective circuitry:

(i) Registered protective circuitry shall block transmission incoming from the network until an off-hook signal is received from the terminal equipment.

(ii) Registered protective circuitry shall provide an off-hook signal within 0.5s following the receipt of an off-hook signal from the terminal equipment and shall maintain this off-hook signal for the duration of the call.

14. Section 68.316 is amended by revising the section heading to read as follows:

§ 68.316 Hearing aid compatibility: Technical requirements.

* * * * *

15. Section 68.317 is amended by revising the section heading to read as follows:

§ 68.317 Hearing aid compatibility volume control: technical standards.

* * * * *

16. Section 68.318 is revised to read as follows:

§ 68.318 Additional limitations.

(a) *General.* Registered terminal equipment for connection to those services discussed below must incorporate the specified features.

(b) *Registered terminal equipment with automatic dialing capability.* (1) Automatic dialing to any individual number is limited to two successive attempts. Automatic dialing equipment which employ means for detecting both busy and reorder signals shall be permitted an additional 13 attempts if a busy or reorder signal is encountered on each attempt. The dialer shall be unable to re-attempt a call to the same number for at least 60 minutes following either the second or fifteenth successive attempt, whichever applies, unless the dialer is reactivated by either manual or external means. This rule does not apply to manually activated dialers that dial a number once following each activation.

Note to paragraph (b)(1): Emergency alarm dialers and dialers under external computer control are exempt from these requirements.

(2) If means are employed for detecting both busy and reorder signals, the automatic dialing equipment shall return to its on-hook state within 15 seconds after detection of a busy or reorder signal.

(3) If the called party does not answer, the automatic dialer shall return to the on-hook state within 60 seconds of completion of dialing.

(4) If the called party answers, and the calling equipment does not detect a compatible terminal equipment at the called end, then the automatic dialing equipment shall be limited to one additional call which is answered. The automatic dialing equipment shall comply with paragraphs (b)(1), (b)(2), and (b)(3) of this section for additional call attempts that are not answered.

(5) Sequential dialers shall dial only once to any individual number before proceeding to dial another number.

(6) Network addressing signals shall be transmitted no earlier than:

(i) 70 ms after receipt of dial tone at the network demarcation point; or

(ii) 600 ms after automatically going off-hook (for single line equipment that does not use dial tone detectors); or

(iii) 70 ms after receipt of CO ground start at the network demarcation point.

(c) *Line seizure by automatic telephone dialing systems.* Automatic telephone dialing systems which deliver a recorded message to the called party must release the called party's telephone line within 5 seconds of the time notification is transmitted to the system that the called party has hung up, to allow the called party's line to be used to make or receive other calls.

(d) *Telephone facsimile machines; Identification of the sender of the message.* It shall be unlawful for any person within the United States to use a computer or other electronic device to send any message via a telephone facsimile machine unless such message clearly contains, in a margin at the top or bottom of each transmitted page or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the

message and the telephone number of the sending machine or of such business, other entity, or individual. Telephone facsimile machines manufactured on and after December 20, 1992, must clearly mark such identifying information on each transmitted message.

(e) *Requirement that registered equipment allow access to common carriers.* Any equipment or software manufactured or imported on or after April 17, 1992, and installed by any aggregator shall be technologically capable of providing consumers with access to interstate providers of operator services through the use of equal access codes. The terms used in this paragraph shall have meanings defined in § 64.708 of this chapter (47 CFR 64.708).

[FR Doc. 97–29925 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–97, RM–9047]

Radio Broadcasting Services; Mt. Juliet and Belle Meade, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a Petition for Reconsideration filed by the Cromwell Group, Inc. directed to the *Report and Order* in this proceeding which reallotted Channel 294A from Mt. Juliet to Belle Meade, Tennessee, and modified the Station WNPL construction permit to specify Belle Meade as the community of license. *See* 62 FR 40949, July 31, 1997. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* adopted October 22, 1997, and released October 31, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–30281 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 191, 192 and 195

[Docket No. RSPA 97–2096; Amdt Nos. 191–12; 192–81; 195–59]

RIN 2137–AC99

Pipeline Safety: Regulations Implementing Memorandum of Understanding With the Department of the Interior

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Direct final rule.

SUMMARY: This direct final rule (DFR) would implement a provision of a December 10, 1996, Memorandum of Understanding (MOU) between the Department of the Interior (DOI) and the Department of Transportation (DOT) regarding Outer Continental Shelf (OCS) pipelines by redesignating the point at which an OCS pipeline is subject to RSPA regulations. Under this rule, RSPA would establish and enforce design, construction, operation, and maintenance regulations and investigate certain accidents for all pipelines located downstream of the point at which operating responsibility for the pipelines transfers from a producing operator to a transporting operator.

DATES: This direct final rule takes effect March 19, 1998. If RSPA does not receive any adverse comment or notice of intent to file an adverse comment by January 20, 1998 the rule will become effective on the date specified. RSPA will issue a subsequent notice in the **Federal Register** by February 17, 1998, after the close of the comment period, to confirm that fact and reiterate the effective date. If an adverse comment or notice of intent to file an adverse comment is received, RSPA will issue a timely notice in the **Federal Register** to confirm that fact and to withdraw the DFR in whole or in part. RSPA may then incorporate the adverse comment into a subsequent DFR or may publish a notice of proposed rulemaking.

ADDRESSES: Written comments on the subject of this DFR may be submitted to the Dockets Facility, U.S. Department of Transportation, 400 Seventh Street, SW, Plaza 401, Washington, DC 20590–0001. Comments should identify the docket number of this DFR, RSPA–97–2096. Persons should submit the original and one copy. Persons wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard. Alternatively, comments may be submitted via e-mail to le.herrick@rspa.dot.gov. The Dockets facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, (202) 366–5523 or e-mail le.herrick@rspa.dot.gov regarding the subject matter of this DFR, or the Dockets Facility, (202) 366–5046, regarding copies of this DFR or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

Under an MOU dated May 6, 1976, RSPA regulated hazardous liquid, carbon dioxide, and natural gas pipelines located downstream of the outlet flange of each facility where hydrocarbons are first produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream. DOI regulated those pipelines located upstream of this point. The Departments agreed to change this regulatory boundary with the signing of the December 10, 1996, MOU. The 1996 MOU was the result of negotiations that began in the summer of 1993, which included a high degree of participation from the regulated industry. RSPA and DOI's Minerals Management Service (MMS) solicited public comments on a draft MOU through a joint **Federal Register** notice (60 FR 27546; May 24, 1995). The notice also announced a public meeting at the MMS Gulf of Mexico regional office in New Orleans, Louisiana, on August 1, 1995, to discuss the proposal. Over 70 people attended the meeting, which generated over 100 pages of comments from natural gas and petroleum trade organizations; natural gas and oil exploration and production companies; transmission companies; offshore construction companies; and industry consultants. Twenty-three individuals and organizations submitted written comments on the **Federal Register** notice. A transcript of this meeting and copies of the comments are available in Docket No. RSPA–97–2096.

In May 1996, RSPA and MMS met with an industry workgroup representing OCS oil and natural gas producers and transmission pipeline

operators. The workgroup proposed that the agencies allow individual operators of production and transportation facilities to define the boundaries of their respective facilities. They suggested that producers and transporters can best make such decisions based on the unique operating characteristics of each facility. Under this rule, RSPA would establish and enforce design, construction, operation, and maintenance regulations and investigate certain accidents for all OCS transportation pipelines beginning downstream of the point at which operating responsibility transfers from a producing operator to a transporting operator. Producing operators are companies which are engaged in the extraction and processing of hydrocarbons on the OCS. Transporting operators are companies which are engaged in the transportation of those hydrocarbons.

Intent of the Rule

The intent of this rule is to require OCS production and transportation pipeline operators to designate the specific points on their pipelines where operating responsibility transfers from a producing operator to an adjoining transporting operator. The rule would amend 49 CFR parts 191, 192 and 195. Generally, operators will have 60 days after the date the rule becomes final to durably mark the specific points at which operating responsibility transfers. In most cases, the specific transfer points will be easily identifiable because of specific valves or flanges where the adjoining operations connect, or because of differences in paint used by adjoining operators to protect and maintain pipeline coatings or surfaces. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have 180 days after the final rule becomes effective to identify the transfer points on a schematic. The 180-day period will give operators time to identify the transfer points during routine maintenance. If it is not practicable to durably mark a transfer point, and the transfer point is located above water, then the operator must depict the transfer point on a schematic maintained near the transfer point. Some transfer points may be located underwater. In such cases, the operator must identify the transfer point on a schematic which must be maintained at the nearest upstream facility and provided to RSPA upon request.

For those instances in which adjoining operators do not or can not agree on a transfer point, RSPA's Office of Pipeline Safety (OPS) and MMS will make a joint determination of the boundary.

The OPS and MMS may, through their enforcement agencies and in consultation with the affected parties, agree to exceptions to the general boundary description (operations transfer point) on a facility-by-facility or area-by-area basis. Operators may also petition OPS and MMS for exceptions to the general boundary description.

Conversion to service: A pipeline previously used in service and not subject to DOT regulations which comes under these regulations as a result of this rulemaking qualifies for use under the DOT regulations if the operator prepares and follows a written procedure to carry out the requirements of 49 CFR 192.14 or 195.5 (Conversion to service subject to this part). Pipeline segments designed and constructed under DOT regulations before March 19, 1998 may continue to operate under DOT design and construction requirements until significant modifications or repairs are made to those segments. After March 19, 1998 DOI operational and maintenance requirements will apply to those segments.

Rulemaking Analysis

The December 1996 MOU redefined the DOT/DOI regulatory boundary definition from the OCS facility where hydrocarbons are ''first produced, separated, dehydrated, or otherwise processed'' to the point at which ''operating responsibility for the pipelines transfers from a producing operator to a transporting operator''. The MOU places, to the greatest extent practicable, producer-operated pipelines under DOI regulation and transporter-operated pipelines under DOT regulation. The changes in this rule would substantially reduce the regulatory burdens currently caused by the overlapping Federal regulatory responsibilities and the inconsistencies between the requirements. The changes will substantially increase the efficiency of governmental resources on the OCS without compromising safety.

Executive Order (E.O.) 12866

RSPA reviewed this rule under E.O. 12866 and determined that this is not an economically significant rule. The Office of Management and Budget (OMB) has not asked to review this rule under E.O. 12866.

Regulatory Flexibility Act

Oil and gas and production and transportation companies are classified under Standard Industrial Codes (SIC's) by the Census Bureau. The Small Business Administration further classifies ''small businesses'' in the various offshore sectors as follows: (1) Oil and gas producers that have fewer than 500 employees, (2) liquid pipeline companies than have fewer than 1,500 employees; (3) natural gas pipeline companies that have gross annual receipts of $25 million or less; and (4) offshore oil and gas field exploration service or production service companies that have gross annual receipts of $5 million or less. There are many companies on the OCS that are ''small businesses'' by these definitions. However, the technology necessary for conducting offshore oil and gas exploration and development activities is very complex and costly, and most entities that engage in offshore activities have considerable financial resources well beyond what would normally be considered ''small business.'' These entities customarily conduct their operations by contracting with offshore drilling or service companies and therefore tend to have relatively few employees compared to the considerable financial resources of their operations.

This rule would affect a substantial number of ''small entities;'' however, the economic effects of the rule would not be significant. The economic effects on the oil and gas production and transportation companies directly affected by the rule would be insignificant because of the minimal costs that operators incur during the first year that the rule is implemented. (In that year, offshore producers would have to identify all points on their pipelines at which operating responsibility transfers from a producer to a transporter. In succeeding years there would be virtually no economic impact resulting from the rule.) The offshore service companies would be indirectly affected by the rule through their contractual relationships with the primary producing and transporting companies—they would not be directly regulated in any way. This rule would not impose any new restrictions on small pipeline service companies or manufacturers, nor will it cause their business practices to change. To the extent that this rule might eventually cause some of the relatively larger OCS operators to make modifications to their pipelines, it may have a minor beneficial effect of increasing demand for the services and equipment of smaller service companies and manufacturers.

Paperwork Reduction Act

This rule contains a collection of information which RSPA is submitting

to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of RSPA's continuing effort to reduce paperwork and respondent burdens, RSPA invites the public and other Federal agencies to comment on any aspect of the reporting burden in 49 CFR 192 and 195 as amended by this DFR. Submit your comments to the Office of Information and Regulatory Affairs; OMB; Attention: Desk Officer for the Department of Transportation (Docket No. RSPA 97–2096); Washington, D.C. 20503. Send a copy of your comments to L.E. Herrick, Room 2335, 400 Seventh Street, Washington, DC 20590-0001. You may obtain a copy of the supporting statement for the collection of information by contacting the Dockets Facility.

OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within that time period. However, RSPA will consider all comments received during the comment period for this direct final rule.

The Paperwork Reduction Act of 1995 provides that 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.

The title of this collection of information is ''49 CFR 191, 192 and 195 Pipeline Safety: Regulations Implementing Memorandum of Understanding with the Department of the Interior.''

The collection of information in the DFR and for each transporter operating a pipeline consists of: (1) Reviewing existing pipeline maps, (2) conferring and agreeing with operators of adjoining production pipeline segments concerning the locations of specific transfer points, and (3) either marking directly on each pipeline or depicting on a schematic the specific point on each pipeline where operating responsibility transfers from the producing operator to a transporting operator. As stated above under the ''Intent of the Rule'' section, specific transfer points will be easily identifiable in most cases, either because of specific valves or flanges where the adjoining operations connect, or because of differences in paint that adjoining operators use to protect and maintain pipeline coatings or surfaces.

Generally operators will have until 60 days after the date the rule becomes final to durably mark the points at which operating responsibility transfers. For those relatively few instances where the transfer points are not identifiable by durable marking, operators will have 180 days after the date the rule becomes final to identify, on a schematic, the transfer points. The requirement to identify the boundary is mandatory. The RSPA will use the information to determine the demarcation where DOT will establish and enforce design, construction, operation, and maintenance regulations and investigate certain accidents, as distinguished from MMS responsibilities.

In calculating the burden, RSPA assumed that respondents perform most of the requirements and maintain records in the normal course of their activities, such as painting their pipelines and maintaining valves and flanges. RSPA considers these to be usual and customary practices and did not include them in the burden estimates. Commenters are invited to provide information if they disagree with this assumption and they should tell RSPA what are the burden hours and costs imposed by this collection of information (i.e., marking of transfer points).

The regulated community consists of approximately 160 Federal OCS oil and gas producers and 70 transportation pipeline operators. There are approximately 3,000 points where operating responsibility for pipelines transfers from a producer to a transporter. The RSPA assumes from discussions with MMS and the operators that about 2,400 (representing 80 percent) of these transfer points are already marked. Therefore, this rulemaking would require a one-time identification and marking of about 600 points where operating responsibility for pipelines transfers from a producer to a transporter. For the 2,400 transfer points that are clearly marked, there would be no information burden. The 600 unmarked transfer points, on the other hand, would require widely-varying times for identification depending on whether a painted line or a schematic was used to identify the transfer point.

The public reporting burden for this information collection requirement is estimated to average 5 hours per response for each transfer point. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the required marking. Based on 600 unmarked transfer points, RSPA estimates that the total one-time burden of this collection of information to be 3,000 hours total. The average annualized burden over a 3-year period would be 1,000 hours. Based on $35 per hour, the total burden hour cost to respondents is estimated to be $35,000 annually.

Takings Implication Assessment

The DOT certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

Unfunded Mandates Reform Act of 1995

This rule does not contain any unfunded mandates to State, local, or tribal governments, nor would it impose significant regulatory costs on the private sector. Anticipated costs to the private sector will be far below the $100 million annual threshold that was established by the Unfunded Mandates Reform Act.

E.O. 12988

The DOT has certified to OMB that this regulation meets the applicable civil justice reform standards provided in Sections 3(a) and 3(b)(2) of E.O. 12988.

National Environmental Policy Act

The DOT has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects

49 CFR Part 191

Gas, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, RSPA amends 49 CFR parts 191, 192 and 195 as follows:

PART 191—[AMENDED]

1. The authority citation for part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, and 60124; and 49 CFR 1.53.

2. Section 191.1 is amended by adding paragraph (b)(3) to read as follows:

§ 191.1 Scope.

* * * * *

(b) * * *

(3) On the Outer Continental Shelf upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator.

3. Section 191.3 is amended by adding a definition in alphabetical order to read as follows:

§ 191.3 Definitions.

* * * * *

Outer Continental Shelf means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

* * * * *

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; 49 CFR 1.53.

2. Section 192.1 is amended by adding paragraph (b)(5) to read as follows:

§ 192.1 Scope of part.

* * * * *

(b) * * *

(5) On the Outer Continental Shelf upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator.

3. Section 192.3 is amended by adding a definition in alphabetical order to read as follows:

§ 192.3 Definitions.

* * * * *

Outer Continental Shelf means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

* * * * *

4. Section 192.10 is added to read as follows:

§ 192.10 Outer continental shelf pipelines.

Operators of transportation pipelines on the Outer Continental Shelf (as defined in the Outer Continental Shelf Lands Act; 43 U.S.C. 1331) must identify on all their respective pipelines the specific points at which operating responsibility transfers to a producing operator. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have until September 15, 1998 to identify the transfer points. If it is not practicable to durably mark a transfer point and the transfer point is located above water, the operator must depict the transfer point on a schematic located near the transfer point. If a transfer point is located subsea, then the operator must identify the transfer point on a schematic which must be maintained at the nearest upstream facility and provided to RSPA upon request. For those cases in which adjoining operators have not agreed on a transfer point by September 15, 1998 the Regional Director and the MMS Regional Supervisor will make a joint determination of the transfer point.

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 195.1 is amended by adding a new paragraph (b)(6) and redesignating paragraphs (b)(6) through (b)(8) as paragraphs (b)(7) through (b)(9) to read as follows:

§ 195.1 Applicability.

* * * * *

(b) * * *

(6) Transportation of hazardous liquid or carbon dioxide in Outer Continental Shelf pipelines which are located upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator.

* * * * *

3. Section 195.2 is amended by adding a definition in alphabetical order to read as follows:

§ 195.2 Definitions.

* * * * *

Outer Continental Shelf means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

* * * * *

4. Section 195.9 is added to read as follows:

§ 195.9 Outer continental shelf pipelines.

Operators of transportation pipelines on the Outer Continental Shelf must identify on all their respective pipelines the specific points at which operating responsibility transfers to a producing operator. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have until September 15, 1998 to identify the transfer points. If it is not practicable to durably mark a transfer point and the transfer point is located above water, the operator must depict the transfer point on a schematic maintained near the transfer point. If a transfer point is located subsea, the operator must identify the transfer point on a schematic which must be maintained at the nearest upstream facility and provided to RSPA upon request. For those cases in which adjoining operators have not agreed on a transfer point by September 15, 1998 the Regional Director and the MMS Regional Supervisor will make a joint determination of the transfer point.

Issued in Washington D.C. on November 12, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–30216 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS–101A, Amdt. 192–82 , 195–60]

RIN 2137–AC 57

Mandatory Participation in Qualified One-Call Systems by Pipeline Operators

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule requires that operators of onshore gas, hazardous liquid, and carbon dioxide pipelines participate in qualified one-call systems as part of the required excavation damage prevention programs. The rule also limits the current exclusion of certain small gas systems from compliance with the damage prevention program requirements. This final rule is intended to reduce excavation damage, the largest single cause of pipeline failures.

EFFECTIVE DATE: This final rule takes effect May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Christina Sames by telephone at (202) 366–4561 or through the Internet at christina.sames@rspa.dot.gov, about this document, or the Dockets Unit at (202) 366–5046, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION:

One-Call Systems

A one-call system is a communication system established individually or jointly by utilities, government agencies, or other operators of underground facilities to provide a single telephone number (other methods of communication are also used) for excavators and the public to call to notify participating members of their intent to excavate. The one-call systems receive the excavation notices and transmit them to operators of underground pipeline facilities and other underground facilities that participate in the system.

Upon receipt of the excavation notices, participating operators that have underground facilities in the vicinity of the excavation arrange for the timely identification and temporary marking of underground facilities. In addition, underground operators may inspect the site during the excavation activities to ensure the safety of their underground facilities.

National One-Call Campaign and the Damage Prevention Quality Action Team

There are now 75 one-call systems operating in 49 states and the District of Columbia. Not all of the operating one-call systems meet the qualifications for a ''one-call notification system,'' as defined in 49 CFR 198.39. Hawaii and Puerto Rico are currently without a one-call system.

Forty-seven states and the District of Columbia have damage prevention laws that, to varying degrees, govern the activities performed by excavators and persons locating and temporarily marking underground facilities. However, most of the existing state damage prevention programs do not meet all of the requirements of § 198.37, ''State one-call damage prevention program.''

To address the problem of incomplete national one-call coverage and the deficiencies in some existing one-call systems, RSPA has launched a national campaign to encourage states to adopt improved one-call notification systems. The national campaign targets states for concentrated outreach to assist their efforts to upgrade current one-call systems. The campaign focuses on mandatory operator participation, mandatory excavator participation, State-wide coverage, and civil penalty enforcement. The national campaign also works with selected states currently without one-call legislation or those which need to strengthen existing legislation.

RSPA has also formed a Damage Prevention Quality Action Team to address third party damage to underground facilities including pipelines. The Team includes representatives from RSPA, the natural gas and hazardous liquid pipeline industry, the telecommunications industry, States, one-call centers, and the insurance and contracting industries. The Team is evaluating existing damage prevention education campaigns and will design and implement a national public education campaign to reduce third party damage.

Rulemaking Proposal (Docket No. PS–101A)

On March 20, 1995, RSPA issued a notice of proposed rulemaking (NPRM) titled ''Mandatory Participation in Qualified One-Call Systems by Pipeline Operators'' (60 FR 14714). The NPRM proposed to remove the option in §§ 192.614(a) and 195.442(a) that permits a pipeline operator to receive and record notification of planned excavation activities rather than to participate in a qualified one-call system covering the area where the operator's pipeline is located.

The NPRM proposed to require that pipeline operators only participate in qualified one-call systems. A one-call system would be considered qualified if the state had adopted a one-call damage prevention program in compliance with § 198.37. A one-call system would also be considered qualified if it operates in accordance with § 198.39, provides a pipeline operator the same opportunity to participate in one-call system management that is offered to other owners of underground facilities, and assesses a participating pipeline operator a fee that is proportionate to the service provided by the one-call system.

The NPRM also proposed to extend the excavation damage prevention program requirements to petroleum gas systems subject to § 192.11 and to small gas systems whose primary activity includes the transportation of gas.

The NPRM proposed to limit the current exemption for operators of gas systems, including operators of master meter systems, whose primary activity does not include the transportation of gas. RSPA is sensitive to the minimum resources of these small operators and proposed that small operators be exempted from identifying excavators in the vicinity of the pipeline. RSPA also proposed that small operators be exempted from notifying excavators of the damage prevention program's existence and purpose and on how to learn the location of underground pipelines before excavation activities begin. In addition, RSPA proposed that these small operators be exempted from the requirement for a written damage prevention program. These operators would still be required to provide a means of receiving and recording notification of planned excavation activities, to provide for notification of persons who give notice of an intent to excavate of the type of temporary marking to be used and how to identify the markings, to provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins, and to provide for the inspection of pipelines that the operator has reason to believe could be damaged by excavation activities.

Under the proposed regulation, pipeline operators would continue to receive and record the notification of planned excavation activities using their own personnel in areas where one-call systems are not yet established, or where a qualified one-call system is not yet in place. However, operators would be required to join a qualified one-call system once it was established.

Comments to the NPRM

RSPA received sixteen comments in response to the NPRM. These commenters represented natural gas and hazardous liquid pipeline operators, industry trade associations, and government agencies.

All sixteen commenters voiced general support for the NPRM. Among those in support, a state pipeline safety agency commented that many states have already instituted mandatory one-call membership for regulated intrastate underground facility operators.

The majority of the commenters also voiced a general opinion that all underground facility operators and all excavators should be required to participate in a qualified one-call system. Commenters recognized that RSPA can only require regulated pipeline operators to participate in qualified one-call systems and supported RSPA's current initiative to encourage all underground facility operators and all excavators to participate in a qualified one-call system. One commenter also supported RSPA's reduction of state grants to states that do not establish mandatory

participation for all underground utilities and excavators.

One commenter recommended clarification of the proposed language in § 192.614(e) to ensure that municipal gas systems are included in the damage prevention regulations. The commenter stated that the proposed wording could be interpreted to exclude municipal gas systems from certain damage prevention regulations. Municipal gas systems are currently required to have a damage prevention program, and RSPA has clarified the language in this final rule to prevent misinterpretation.

Another commenter suggested that RSPA clarify that operators are not precluded from receiving calls directly from individuals on activities near a pipeline. Certain pipelines are required to be marked with line markers that show the location of that pipeline. These line markers list the operator and a telephone number for individuals to call to receive or transmit information on the pipeline. RSPA agrees that a pipeline operator should be allowed to receive information directly from individuals on activities near the operator's pipeline. This final rule does not preclude that from occurring.

Other recommended changes to the NPRM focused on the problem of overlapping one-call service areas, and the terms ''disproportionate cost'' and ''coverage.'' These recommended changes are discussed below.

Comments on Overlapping One-Call Service Areas

There are limited areas of the United States, primarily in the northwest and in the state of Texas, where more than one one-call system covers the same service area. In areas of overlapping one-call coverage, excavators may need to call several one-call systems to ensure that all underground utilities are informed of excavation activities. In addition, underground utility operators may need to join several one-call systems to ensure that they are informed of all excavation activities near the pipeline. These problems are alleviated if the state has a central telephone number for excavators to call for excavation activities, or if the one-call systems in the areas of overlapping coverage communicate with one another.

Three commenters and an industry trade association stated that operators should not be required to join more than a single qualified one-call system for a given area. One commenter stated that if an excavator is required to make more than one call, there is no true one-call system. Two commenters thought the NPRM might prolong the problem by providing captive participation and funding for redundant systems. In addition, the commenters thought that captive participation and funding might create an incentive for the establishment of multiple qualified one-call systems in a given area, thus reducing the one-call system effectiveness.

RSPA does not agree that multiple one-calls will be created for the same coverage area, or that the current problem of overlapping coverage will be prolonged, if an operator is required to join all qualified one-call centers that cover the operator's pipeline system. RSPA bases this on the fact that the number of states mandating one-call membership has been increasing while the problem of overlapping coverage has been decreasing. If the problem of overlapping one-call coverage were to increase with mandatory participation, as the commenters suggested, it should have already occurred in the states mandating one-call participation. This has not happened.

RSPA does not see the need for an operator to join more than one qualified one-call system in overlapping coverage areas, if there is a central telephone number for excavators to call for excavation activities, or if the one-call systems in those areas communicate with one another. A central telephone number can forward an intent to excavate to multiple one-call systems. This allows an operator to join a single one-call system and still receive all notices of intent to excavate that may affect the operator's pipeline. One-call systems that communicate notices of intent to excavate to other one-call systems also allow an operator to join a single one-call system and still receive all notices of intent to excavate that may affect the pipeline. Both situations end the need for an operator to join several one-call systems in areas of overlapping coverage.

States that have overlapping one-call coverage are actively working to alleviate the problem. As an example, Texas has recently passed legislation that will create a central number for excavators to call. In addition, several of the states in the northwest that have small areas of overlapping coverage are currently referring excavators to a central number. Both alleviate the need for an operator to join more than a single one-call system covering its pipeline.

Disproportionate Cost and Coverage

The NPRM proposed that pipeline operators join a one-call system that ''assesses a participating pipeline operator a fee that is not disproportionate to the costs of the one-call system's coverage of the operator's pipeline.'' Two commenters recommended modifying the proposed section to read ''Assesses a participating pipeline operator a fee that is proportionate to the operator's utilization of the one-call service.'' RSPA has modified the proposed regulation in response to these recommendations.

Additional Concerns on State Jurisdiction

A state pipeline safety agency raised concern about a state's ability to impose one-call requirements on interstate pipeline operators. This rule should allay any concern about an interstate operator's required compliance with one-call damage prevention notification and marking requirements. Although a state cannot impose pipeline safety standards on an interstate operator, RSPA urges interstate operators to comply with any other requirements a one-call system imposes as a condition of membership.

Presentation to Advisory Committees

On November 8 and 9, 1995, RSPA presented the NPRM and the comments received on the NPRM to its two pipeline advisory committees, the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC).

On November 8, 1995, the THLPSSC discussed and unanimously supported mandating pipeline operator participation in qualified one-call systems with one minor modification to the wording used in the NPRM. The THLPSSC recommended that RSPA modify § 195.442(b)(2)(iii) to remove the double negative. The suggested wording reads ''Assesses a participating pipeline operator a fee that is proportionate to the costs of the one-call system's coverage of the operator's pipeline.''

The THLPSSC also discussed the problem of overlapping one-call coverage and the possible actions that could be taken in these areas. The THLPSSC discussed requiring a pipeline operator to only join one qualified one-call system in areas of overlapping one-call coverage, on the condition that the operator's entire system in the overlapping area be covered by the single one-call system.

RSPA has studied the possible consequences of this action and believes there is a safety issue. If an operator joins a single one-call system in an overlapping coverage area, an excavator could call the one-call system the operator has not joined. The excavator may not understand that another call has to be made to obtain the location of

additional underground facilities covered by the other one-call system. The excavator may believe it is safe to dig in the area when, in fact, there is a pipeline or other underground utility in the area. This could lead to a hazardous liquid release, explosion, or possible death. Therefore, RSPA will not pursue this action.

On November 9, 1995, the TPSSC voted six to five in favor of the proposed regulation and several modifications. Those opposed were concerned with the recommendation to modify § 198.39, made by other committee members, and not with the overall intent of the NPRM. This recommendation is discussed below in further detail.

The TPSSC recommended that pipeline operators only participate in one qualified one-call system in areas of overlapping one-call coverage. In conjunction with that recommendation, the TPSSC proposed that RSPA modify, through a new NPRM, § 198.39, ''Qualifications for operation of one-call notification system.'' The proposed modification would require a one-call system to communicate with all other one-call systems in areas of overlapping coverage before that one-call system could be considered qualified.

The TPSSC recommended that the modification to § 198.39 be done in conjunction with the requirement that pipeline operators need only join one qualified one-call system in areas of overlapping jurisdiction. The TPSSC recognized that RSPA could not modify part 198 in this final rule and some members were concerned that implementing the actions at different times would cause undue problems. Their six to five vote reflects these concerns.

The TPSSC also followed the THLPSSC's recommended modification of § 195.442(b)(2)(iii) by unanimously concurring that § 192.614(b)(2)(iii) be modified to remove the double negative. The recommended wording would read ''Assesses a participating pipeline operator a fee that is proportionate to the costs of the one-call system's coverage of the operator's pipeline.''

Amendments

RSPA has adopted the TPSSC's and THLPSSC's recommended wording of §§ 192.614(b)(2)(iii) and 195.442(b)(2)(iii) and has removed the double negative. RSPA has also clarified § 192.614(e) to ensure that municipal gas systems are included in the damage prevention regulations.

RSPA has not adopted the recommendation to require pipeline operators to participate in only one qualified one-call system in areas of overlapping one-call coverage. RSPA has not adopted this recommendation due to the possible safety issues. However, RSPA does not see the need for a pipeline operator to join more than a single one-call system if there is a central telephone number for excavators to call, or if the one-call systems in the overlapping coverage area communicate with each other. RSPA is taking into consideration the TPSSC's recommendation to modify § 198.37 to require one-call systems to communicate with one another in areas of overlapping one-call coverage before they are considered a qualified one-call system. A new NPRM will be issued if RSPA pursues the recommendation.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The final rule is also not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The final rule requires that operators of interstate and intrastate pipelines participate in qualified one-call systems. It requires less stringent standards for participation of small entities, including master meter operators, whose primary activity does not include the transportation of gas.

Presently, approximately 75 one-call systems operate in 49 states and the District of Columbia. These one-call systems perform many of the duties required under parts 192 and 195 for an excavation damage prevention program. Many pipeline operators already participate in these one-call systems on a voluntary or state-mandated basis.

Forty-seven states and the District of Columbia have damage prevention laws that, to varying degrees, govern the activities performed by excavators and persons locating and temporarily marking underground facilities. Twenty-eight states and the District of Columbia mandate one-call participation by most commercial underground facility owners and operators. Therefore, many of the operators that this final rule covers already have some form of an excavation damage prevention program and should incur little or no additional cost as a result of this final rule.

Based on available data and discussions with the American Gas Association, the American Public Works Association, and One-Call Systems International, the cost for a pipeline operator to participate in a qualified one-call system should be approximately the same or slightly less than if the operator performed the excavation damage prevention duties independently. Therefore, operators that are required to meet the current damage prevention program requirements, but who have not joined a qualified one-call system, should incur little or no additional cost.

Operators in areas with no qualified one-call systems would continue to receive and record notifications of planned excavation activities with their own personnel and would incur no additional cost. However, operators would be required to join a qualified one-call system once one was established.

49 U.S.C. 60102(b)(3) requires RSPA's technical advisory committees to serve as peer review panels for the cost/benefit analysis that accompanies each rulemaking. The THLPSSC and the TPSSC have reviewed the cost/benefit information contained in this final rule and three-fourths of the members have voted to forego a formal analysis and report on the merits of the data, the methods used in the cost/benefit analysis, and any recommended options relating to the cost/benefit analysis.

Based on the above, this rule is not considered to be significant under Executive Order 12866. A complete text of the regulatory evaluation is available for review in this docket.

Executive Order 12612

The final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 (''Federalism''), and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs or $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective to the rule.

Regulatory Flexibility Act

This final rule extends the excavation damage prevention program requirements to petroleum gas systems subject to § 192.11 and to small gas systems whose primary activity includes the transportation of gas. It also limits the current exemption for

operators of gas systems whose primary activity does not include the transportation of gas. However, the final rule is sensitive to the minimum resources of these small operators.

Operators whose primary activity does not include the transportation of gas, such as master meter operators, are exempted from the requirement that the damage prevention program be written. This is one of the most costly parts of this regulation. These operators are exempted from the requirements to identify persons who normally engage in excavation activities in the area in which the pipeline is located, and to provide actual notification to those identified persons on the damage prevention program's existence and purpose and on how to learn the location of underground pipelines before excavation activities begin. Because little excavation activity occurs in areas where master meter operators operate, the cost of joining a one-call system for these small operators should be minimal.

Based on these facts, I certify that this final rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this final rule.

Paperwork Reduction Act

This final rule will require no additional increase in the current information collection burden requirements for gas pipeline operators and hazardous liquid and carbon dioxide operators. Twenty-eight states and the District of Columbia mandate one-call participation by most commercial underground facility owners and operators. In addition, many operators already voluntarily participate in qualified one-call systems. Therefore, many of the operators that this final rule covers already participate in qualified one-call systems and should incur no additional paperwork burden as a result of this final rule.

Based on available data and discussions with One-Call Systems International, the paperwork burden for a pipeline operator to participate in a qualified one-call system should be less than if the operator performed the excavation damage prevention duties independently. Therefore, operators that are required to meet the current damage prevention program requirements, but who have not joined a qualified one-call system, should incur little or no additional paperwork burden.

Operators in areas with no qualified one-call systems would continue to receive and record notifications of planned excavation activities with their own personnel and would incur no additional paperwork burden as a result of this final rule.

List of Subjects

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR parts 192 and 195 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5102, 60102, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53.

2. Section 192.614 is amended by revising paragraph (a), by removing paragraph (c)(4), by redesignating paragraphs (b) and (c) as (c) and (d), by revising the introductory text of newly redesignated (c)(2), and by adding paragraphs (b) and (e) as follows:

§ 192.614 Damage prevention program.

(a) Except as provided in paragraphs (d) and (e) of this section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. For the purpose of this section, the term ''excavation activities'' includes excavation, blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, and other earthmoving operations.

(b) An operator may comply with any of the requirements of paragraph (c) of this section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of responsibility for compliance with this section. However, an operator must perform the duties of paragraph (c)(3) of this section through participation in a one-call system, if that one-call system is a qualified one-call system. In areas that are covered by more than one qualified one-call system, an operator need only join one of the qualified one-call systems if there is a central telephone number for excavators to call for excavation activities, or if the one-call systems in those areas communicate with one another. An operator's pipeline system must be covered by a qualified one-call system where there is one in place. For the purpose of this section, a one-call system is considered a ''qualified one-call system'' if it meets the requirements of section (b)(1) or (b)(2) of this section.

(1) The state has adopted a one-call damage prevention program under § 198.37 of this chapter; or

(2) The one-call system:

(i) Is operated in accordance with § 198.39 of this chapter;

(ii) Provides a pipeline operator an opportunity similar to a voluntary participant to have a part in management responsibilities; and

(iii) Assesses a participating pipeline operator a fee that is proportionate to the costs of the one-call system's coverage of the operator's pipeline.

(c) * * *

(2) Provides for notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (c)(1) of this section of the following as often as needed to make them aware of the damage prevention program:

* * * * *

(e) Pipelines operated by persons other than municipalities (including operators of master meters) whose primary activity does not include the transportation of gas need not comply with the following:

(1) The requirement of paragraph (a) of this section that the damage prevention program be written; and

(2) The requirements of paragraphs (c)(1) and (c)(2) of this section.

PART 195—[AMENDED]

3. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 60102, 60104, 60108, 60109; 49 CFR 1.53.

4. Section 195.442 is amended by revising paragraph (a), by redesignating paragraphs (b) and (c) as (c) and (d), by revising the introductory text of newly redesignated (c)(2), and adding paragraph (b) to read as follows:

§ 195.442 Damage prevention program.

(a) Except as provided in paragraph (d) of this section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. For the purpose of this section, the term ''excavation activities'' includes excavation, blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, and other earthmoving operations.

(b) An operator may comply with any of the requirements of paragraph (c) of this section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of responsibility for compliance with this section. However, an operator must perform the duties of paragraph (c)(3) of this section through participation in a one-call system, if that one-call system is a qualified one-call system. In areas that are covered by more than one qualified one-call system, an operator need only join one of the qualified one-call systems if there is a central telephone number for excavators to call for excavation activities, or if the one-call systems in those areas communicate with one another. An operator's pipeline system must be covered by a qualified one-call system where there is one in place. For the purposes of this section, a one-call system is considered a ''qualified one-call system'' if it meets the requirements of section (b)(1) or (b)(2) or this section.

(1) The state has adopted a one-call damage prevention program under § 198.37 of this chapter; or

(2) The one-call system:

(i) Is operated in accordance with § 198.39 of this chapter;

(ii) Provides a pipeline operator an opportunity similar to a voluntary participant to have a part in management responsibilities; and

(iii) Assesses a participating pipeline operator a fee that is proportionate to the costs of the one-call system's coverage of the operator's pipeline.

(c) * * *

(2) Provides for notification of the public in the vicinity of the pipeline and actual notification of persons identified in paragraph (c)(1) of this section of the following as often as needed to make them aware of the damage prevention program:

* * * * *

Issued in Washington, D.C. on November 13, 1997.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 97–30290 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970730185–7206–02; I.D. 111297D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Recreational Red Snapper Component

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

ACTION: Closure.

SUMMARY: NMFS closes the recreational fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the annual recreational quota for red snapper will have been reached by November 26, 1997. This closure is necessary to protect the red snapper resource.

DATES: Closure is effective 12:01 a.m., local time, November 27, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the recreational quota for red snapper in the Gulf of Mexico at 4.47 million lb (2.03 million kg) for the current fishing year, January 1 through December 31, 1997.

Under 50 CFR 622.43(a), NMFS is required to close the recreational fishery for red snapper when its quota is reached, or is projected to be reached, by publishing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the recreational quota for red snapper will have been reached by November 26, 1997. Accordingly, the recreational fishery in the EEZ in the Gulf of Mexico for red snapper is closed effective 12:01 a.m., local time, November 27, 1997, through December 31, 1997.

During the closure, the bag and possession limits for red snapper in or from the EEZ in the Gulf of Mexico are zero. In addition, in the Gulf of Mexico on board a vessel for which a commercial vessel permit for Gulf reef fish has been issued, the bag and possession limits for red snapper are zero, without regard to where the red snapper were harvested.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under E.O. 12866.

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

Dated: November 13, 1997.

Richard W. Surdi,

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

[FR Doc. 97–30294 Filed 11–14–97; 10:41 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 961227373–6373–01; I.D. 111297A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Changes

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces further routine management measures adjusting the Pacific Coast groundfish limited entry fisheries for the *Sebastes* complex and its components, canary and yellowtail rockfish, and the Dover sole, thornyhead, trawl-caught sablefish (DTS) complex and all its components. These actions are authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. These changes are intended to keep landings close to the 1997 harvest guidelines and allocations for these species.

DATES: Effective from 0001 hours (local time) November 16, 1997, including trawl vessels operating in the B platoon. These changes remain in effect, unless modified, superseded or rescinded, until the effective date of the 1998 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be

published in the **Federal Register**. Comments will be accepted through December 4, 1997.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or William Hogarth, Acting Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140 or Rodney McInnis at 562–980–4040.

SUPPLEMENTARY INFORMATION: The following changes to current management measures are based on the best available information, and were recommended by the Pacific Fishery Management Council (Council), in consultation with the States of Washington, Oregon, and California at its November 4–7, 1997, meeting in Portland, OR.

The Sebastes Complex. The *Sebastes* complex consists of all rockfish managed by the FMP except Pacific ocean perch (POP), widow rockfish, shortbelly rockfish, and thornyheads. On January 1, 1997 (62 FR 700, January 6, 1997), the limited entry fishery for the *Sebastes* complex was managed under a 2-month cumulative trip limit of 30,000 lb (13,608 kg) north of Cape Mendocino (40°30' N. lat.) and 150,000 lb (68,039 kg) south of Cape Mendocino. Within these 2-month cumulative limits for the *Sebastes* complex, no more than 6,000 lb (2,722 kg) could be yellowtail rockfish north of Cape Mendocino, no more than 12,000 lb (5,443 kg) could be bocaccio south of Cape Mendocino, and no more than 14,000 lb (6,350 kg) could be canary rockfish coastwide. On May 1, 1997 (62 FR 24845, May 7, 1997), the 2-month cumulative trip limit for bocaccio was reduced to 10,000 lb (4,536 kg), so that its harvest guideline would not be exceeded. However, landings were lower than expected, and on October 1, 1997 (62 FR 51814, October 3, 1997), the 2-month cumulative trip limits were converted to 1-month limits and increased to 5,000 lb (2,268 kg) per month for yellowtail rockfish and 10,000 lb (4,534 kg) per month for canary rockfish. This increased the *Sebastes* complex limits to 20,000 lb (9,072 kg) per month north of Cape Mendocino and 75,000 lb (34,020 kg) per month south of Cape Mendocino.

The best available information at the November 1997 Council meeting indicated that landings still were lower than expected, most likely due to poor weather and reduced fishing effort in October. If rates do not change, landings of yellowtail rockfish would be 22 percent below its harvest guideline, and canary rockfish would be 14 percent below its harvest guideline at the end of the year. Therefore, the Council recommended increasing the 1-month cumulative trip limits for yellowtail and canary rockfish at the earliest date so that the industry would have an opportunity to achieve the harvest guidelines for these species. The trip limit for bocaccio is not changed.

The new 1-month cumulative trip limits for the *Sebastes* complex are: 40,000 lb (18,144 kg) north of Cape Mendocino and 80,000 lb (36,287 kg) south of Cape Mendocino. Within these 1-month cumulative limits, no more than 20,000 lb (9,072 kg) may be yellowtail rockfish north of Cape Mendocino, no more than 5,000 lb (2,268 kg) may be bocaccio south of Cape Mendocino, and no more than 15,000 lb (6,804 kg) may be canary rockfish coastwide.

Dover Sole, Thornyheads, and Trawl-Caught Sablefish (the DTS Complex). In January 1997 (62 FR 700, January 6, 1997), the 2-month cumulative trip limit for the DTS complex was 70,000 lb (31,752 kg) north of Cape Mendocino and 100,000 lb (45,359 kg) south of Cape Mendocino. Within this 2-month cumulative limit, no more than 38,000 lb (17,236 kg) could be Dover sole north of Cape Mendocino, and coastwide no more than 12,000 lb (5,443 kg) could be trawl-caught sablefish and no more than 20,000 lb (9,072 kg) could be thornyheads. No more than 4,000 lb (1,814 kg) of the thornyheads could be shortspine thornyheads.

On May 1, 1997 (62 FR 24845, May 7, 1997), the 2-month cumulative trip limits were reduced for Dover sole north of Cape Mendocino to 30,000 lb (13,608 kg)), and for thornyheads coastwide to 15,000 lb (6,804 kg), of which only 3,000 lb (1,361 kg) could be shortspine thornyheads. The 2-month cumulative limit for the DTS complex north of Cape Mendocino increased by the same amount to 57,000 lb (25,855 kg), while remaining at 100,000 lb (45,359 kg) south of Cape Mendocino. The coastwide 2-month cumulative trip limit for sablefish remained at 12,000 lb (5,443 kg).

On September 1 (62 FR 36228, July 7, 1997) the 2-month cumulative trip limits for the DTS complex and its components were converted to 1-month cumulative limits: For the DTS complex, 28,500 lb (12,927 kg) north of Cape Mendocino and 50,000 lb (22,680 kg) south of Cape Mendocino; for sablefish coastwide, 6,000 lb (2,722 kg); for Dover sole north of Cape Mendocino, 15,000 lb (6,804 kg); and for thornyheads coastwide, 7,500 lb (3,402 kg), of which no more than 1,500 lb (680 kg) could be shortspine thornyheads.

The 1-month cumulative trip limit for sablefish was reduced on October 1, 1997 (62 FR 51814, October 3, 1997), and a 1-month cumulative trip limit was set for Dover sole south of Cape Mendocino; previously Dover sole could comprise the amount of DTS limit that was left over after taking sablefish and thornyheads. As a result, the limited entry fishery for the DTS complex and its components is currently managed under a 1-month cumulative trip limit of 11,000 lb (4,990 kg) north of Cape Mendocino. Within these 1-month cumulative limits, no more than 1,500 lb (680 kg) may be Dover sole north of Cape Mendocino, no more than 2,000 lb (907 kg) may be sablefish coastwide, and no more than 7,500 lb (3,402 kg) may be thornyheads coastwide. No more than 1,500 lb (680 kg) of the thornyheads may be shortspine thornyheads. The same limits for sablefish and thornyheads apply south of Cape Mendocino, but the limit for Dover sole is 30,000 lb (13,608 kg), which changes the DTS limit in that area to 39,500 lb (17,917 kg). As of October 1, 1997, the cumulative limit for the DTS complex is the sum of the cumulative limits of its components.

Reduced effort in October, likely due to bad weather and extremely low cumulative trip limits, resulted in much lower landings than expected. The best available information at the November 1997 Council meeting indicated that the harvest guidelines for all three species would not be reached in 1998 if current landing rates continued. Dover sole is expected to be 12 percent below its coastwide harvest guideline, and trawl-caught sablefish is projected to be 7 percent below its trawl allocation. Landings of longspine and shortspine thornyheads are projected to be 35 and 19 percent below their harvest guidelines, respectively, by the end of the year. Consequently, the Council recommended increasing the 1-month cumulative trip limits for these species to the end of the year to keep landings of the DTS complex and its components within the 1997 harvest guidelines and allocations without increasing discards. Current trip limits are so low that it is felt that these increases will enable fishermen to land fish that otherwise may have been caught and discarded.

The new monthly limits for the DTS complex are 16,000 lb (7,257 kg) north of Cape Mendocino, and 43,000 lb (19,504 kg) south of Cape Mendocino.

Within these limits, no more than 3,000 lb (1,361 kg) may be Dover sole north of Cape Mendocino and 30,000 lb (13,608 kg) south of Cape Mendocino (no change to southern Dover sole); no more than 3,000 lb (1,361 kg) coastwide may be trawl-caught sablefish; and no more than 10,000 lb (4,536 kg) coastwide may be thornyheads. No more than 3,000 lb (1,361 kg) of the thornyheads may be shortspine thornyheads.

Implementation. These changes are implemented in the middle of a 1-month cumulative trip limit period for the ''A'' platoon (whose cumulative trip limits begin at the beginning of a month). The new limits are the total amount that may be landed in November. Therefore, the ''A'' platoon will have the opportunity to harvest the new limits in both November and December. Two-month cumulative trip limits and the 60 percent monthly limits remain in effect only for POP, widow rockfish, and lingcod.

For vessels in the ''B'' platoon (whose cumulative trip limits begin on November 16, 1997) the final 2-month cumulative trip limits for POP, widow rockfish, and lingcod apply to the 6-week period from November 16, 1997, through December 31, 1997, and there is no 60 percent monthly limit for this period. In addition, the equivalent of two 1-month cumulative trip limits for the *Sebastes* complex and its components and for the DTS complex and its components may be landed during the 6-week period from November 16, 1997 through December 31, 1997. (In the previous **Federal Register** notice (62 FR 51814, October 3, 1997), reference to lingcod describing the final cumulative period for the ''B'' platoon was inadvertently deleted.)

NMFS Action

For the reasons stated above, NMFS concurs with the Council's recommendations and makes the following changes to the 1997 annual management measures (62 FR 700, January 6, 1997, as modified at 62 FR 51815, October 3, 1997).

1. For yellowtail rockfish, canary rockfish, and the *Sebastes* complex, paragraphs C.(2)(a)(i) and (ii) of section IV. (regarding cumulative trip limits in the limited entry fishery) are amended, to read as follows:

C. *Sebastes Complex (including Bocaccio, Yellowtail, and Canary Rockfish)*

* * * * *

(2) * * *

(a) * * *

(i) *North of Cape Mendocino*. The cumulative trip limit for the *Sebastes* complex taken and retained north of Cape Mendocino is 40,000 lb (18,144 kg) per vessel per 1-month period. Within this cumulative trip limit for the *Sebastes* complex, no more than 20,000 lb (9,072 kg) may be yellowtail rockfish taken and retained north of Cape Mendocino, and no more than 15,000 lb (6,804 kg) may be canary rockfish.

(ii) *South of Cape Mendocino*. The cumulative trip limit for the *Sebastes* complex taken and retained south of Cape Mendocino is 80,000 lb (36,287 kg) per vessel per 1-month period. Within this cumulative trip limit for the *Sebastes* complex, no more than 5,000 lb (2,268 kg) may be bocaccio taken and retained south of Cape Mendocino, and no more than 15,000 lb (6,804 kg) may be canary rockfish.

* * * * *

2. For the DTS complex, paragraph E.(2)(b) of section IV. (regarding limited entry trip and size limits) is revised, to read as follows:

E. *Sablefish and the DTS Complex (Dover Sole, Thornyheads, and Trawl-Caught Sablefish*)

* * * * *

(2) * * *

(b) * * *

(i) *North of Cape Mendocino*. The cumulative trip limit for the DTS complex taken and retained north of Cape Mendocino is 16,000 lb (7,257 kg) per vessel per 1-month period. Within this cumulative trip limit, no more than 3,000 lb (1,361 kg) may be sablefish, no more than 3,000 lb (1,361 kg) may be Dover sole, and no more than 10,000 lb (4,536 kg) may be thornyheads. No more than 3,000 lb (1,361 kg) of the thornyheads may be shortspine thornyheads.

(ii) *South of Cape Mendocino*. The cumulative trip limit for the DTS complex taken and retained south of Cape Mendocino is 43,000 lb (19,504 kg) per vessel per 1-month period. Within this cumulative trip limit, no more than 3,000 lb (1,361 kg) may be sablefish, no more than 30,000 lb (13,608 kg) may be Dover sole, and no more than 10,000 lb (4,536 kg) may be thornyheads. No more than 3,000 lb (1,361 kg) of the thornyheads may be shortspine thornyheads.

* * * * *

Classification

These actions are authorized by the regulations implementing the FMP. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours. Because this action relieves a burden and must be implemented swiftly to relieve the burden, and because the public had an opportunity to comment on the action at the November 1997 Council meeting, NMFS has determined that good cause exists for this document to be published without affording additional prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under E.O. 12866.

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

Dated: November 14, 1997.

Richard W. Surdi,

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

[FR Doc. 97–30386 Filed 11–14–97; 4:37 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 223
Wednesday, November 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–NM–118–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 SHERPA and SD3 SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 SHERPA and SD3 SHERPA series airplanes. This proposal would require removing the aluminum alloy oxygen pipe assembly and replacing it with a stainless steel assembly. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent aluminum oxygen tubing from bursting and releasing a high-pressure oxygen flow into the passenger cabin, which could result in a fire hazard during flight.

DATES: Comments must be received by December 19, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–118–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–118–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–118–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3–60 SHERPA and SD3 SHERPA series airplanes. The CAA advises that incorrect material had been specified on a detail drawing of the oxygen system. This problem was discovered during manufacturing. The drawing incorrectly specified that the tubing to be installed should be made from aluminum rather than stainless steel. This condition, if not corrected, could result in bursting of the aluminum alloy tubing and releasing of a high-pressure oxygen flow into the passenger cabin, which could result in a fire hazard during flight.

Explanation of Relevant Service Information

Short Brothers has issued Service Bulletins SD3–60 SHERPA–35–1 and SD3 SHERPA–35–2, both dated April 8, 1997, which describe a procedure for removing the existing aluminum alloy oxygen pipe assembly and replacing it with a stainless steel assembly. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The CAA classified these service bulletins as mandatory to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 9 Short Brothers Model SD3–60 SHERPA and SD3 SHERPA series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost $60 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,700, or $300 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Short Brothers, PLC: Docket 97–NM–118–AD.

Applicability: All Model SD3–60 SHERPA and SD3 SHERPA series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent aluminum oxygen tubing from bursting and releasing a high-pressure oxygen flow into the passenger cabin, which could result in a fire hazard during flight; accomplish the following:

(a) Within 90 days after the effective date of this AD, remove the aluminum oxygen tubing pipe assembly and replace it with a stainless steel tubing pipe assembly in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD3–60 SHERPA–35–1 or SD3 SHERPA–35–2, both dated April 8, 1997, as applicable.

(b) As of the effective date of this AD, no person shall install an aluminum alloy oxygen tubing pipe assembly, part number SD3–71–20052–401, on any airplane.

(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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Issued in Renton, Washington, on November 13, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30329 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–184–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111, –211, and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320–111, –211, and –231 series airplanes. This proposal would require repetitive inspections for cracking in the transition and pick-up angles in the lower part of the center fuselage area, and corrective action, if necessary. This proposal would also provide for an optional terminating modification for the repetitive inspection requirements. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking in the transition and pick-up angles of the lower part of the center fuselage, which could result in reduced structural integrity of the wing-fuselage support and fuselage pressure vessel.

DATES: Comments must be received by December 19, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice

Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–184–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320–111, –211, and –231 series airplanes. The DGAC advises that, during a full-scale fatigue test on a Model A320 test article, cracking was found on the transition and pick-up angles between frames 35 and 36. Such cracking is attributed to fatigue-related stress as a result of fastener movement during vibration and loading. Fatigue-related cracking in the pick-up and transition angles in the lower part of the center fuselage, if not detected and corrected in a timely manner, could result in reduced structural integrity of the wing-fuselage support and fuselage pressure vessel.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–53–1028, dated March 1, 1994, which describes procedures for performing repetitive visual inspections of the transition angle between frames 35 and 36, just below left- and right-hand stringer 30; and repetitive rotating probe inspections of the fastener holes of the left- and right-hand pick-up angles.

For structure that is free of cracking, Airbus has also issued Service Bulletin A320–53–1027, dated March 1, 1994; Revision 1, dated September 5, 1994; and Revision 2, dated June 8, 1995. The service bulletin describes procedures for modification of the center fuselage. The modification involves the installation of additional washers between the transition angle and fasteners, and the cold-expansion of the most fatigue-sensitive fastener holes. Accomplishment of this modification would eliminate the need for the repetitive inspections for structure that was free of cracking.

The DGAC classified Airbus Service Bulletin A300–53–1028 as mandatory and issued French airworthiness directive 95–097–065(B), dated May 24, 1995, in order to assure the continued airworthiness of these airplanes in France. The DGAC also approved Airbus Service Bulletin A320–53–1027, Revision 2, dated June 8, 1995.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously; except where cracking is detected and it is 1.9 mm or greater in length, in which case the repair would be required to be accomplished in accordance with a method approved by the FAA.

Differences Between the Proposal and the Related French AD

The proposed AD would differ from the parallel French airworthiness directive in that the proposed AD would not permit further flight with cracking detected in the transition or pick-up angles of the wing-fuselage support. The FAA has determined that, due to safety implications and consequences associated with such cracking, the subject transition and pick-up angles that are found to be cracked must be repaired prior to further flight.

Cost Impact

The FAA estimates that 24 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 9 work hours per airplane to accomplish the proposed inspections at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $12,960, or $540 per airplane, per inspection cycle.

It would take approximately 10 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,895 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $83,880, or $3,495 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 96–NM–184–AD.

Applicability: Model A320–111, –211, and –231 series airplanes, manufacturer's serial numbers 002 through 008 inclusive, 010 through 014 inclusive, 016 through 078 inclusive, and 080 through 107 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct reduced structural integrity of the wing-fuselage support and fuselage pressure vessel resulting from structural fatigue cracking in the transition and pick-up angles, accomplish the following:

(a) Prior to the accumulation of 16,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, accomplish paragraphs (a)(1) and (a)(2) of this AD, in accordance with Airbus Service Bulletin A320–53–1028, dated March 1, 1994.

(1) Perform a visual inspection to detect cracks of the transition angle, in accordance with the service bulletin.

(i) If no crack is detected during the visual inspection required by paragraph (a)(1) of this AD, accomplish either paragraph (a)(1)(i)(A) or paragraph (a)(1)(i)(B) of this AD.

(A) Repeat the visual inspection thereafter at intervals not to exceed 12,000 landings. Or

(B) Prior to further flight, modify the center fuselage in accordance with Airbus Service Bulletin A320–53–1027, dated March 1, 1994; Revision 1, dated September 5, 1994; or Revision 2, dated June 8, 1995. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i)(A) of this AD.

(ii) If any crack is detected during the visual inspection required by paragraph (a)(1) of this AD, prior to further flight, replace the transition angle with a new transition angle, in accordance with Airbus Service Bulletin A320–53–1027, dated March 1, 1994; Revision 1, dated September 5, 1994; or Revision 2, dated June 8, 1995.

(2) Perform a rotating probe inspection to detect cracks of the pick-up angle, in accordance with the service bulletin.

(i) If no crack is detected during the rotating probe inspection required by paragraph (a)(2) of this AD, accomplish either paragraph (a)(2)(i)(A) or (a)(2)(i)(B) of this AD.

(A) Repeat the visual and rotating probe inspections thereafter at intervals not to exceed 12,000 landings. Or

(B) Prior to further flight, modify the center fuselage in accordance with Airbus Service Bulletin A320–53–1027, dated March 1, 1994; Revision 1, dated September 5, 1994; or Revision 2, dated June 8, 1995. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(2)(i)(A) of this AD.

(ii) If any crack is detected and it is less than 1.9 mm in length, prior to further flight, accomplish the applicable corrective actions specified in the service bulletin. For holes that have not been modified in accordance with the service bulletin, repeat the rotating probe inspection thereafter at intervals not to exceed 12,000 landings.

(iii) If any crack is detected and it is 1.9 mm or greater in length, prior to further flight, repair it in accordance with the method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

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

Note 3: The subject of this AD is addressed in French airworthiness directive 95–097–065(B), dated May 24, 1995.

Issued in Renton, Washington, on November 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30330 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–256–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 and CL–600–2A12 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive

(AD) that is applicable to certain Bombardier Model CL–600–1A11 and CL–600–2A12 series airplanes. This proposal would require replacement of the anti-noise filter on the standby and auxiliary power unit (APU) fuel pump assemblies with a new filter. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent electrical arcing between the internal wiring and casing of the anti-noise filter on the standby

and APU fuel pump assemblies, and consequent increased risk of fuel tank explosion or fire.

DATES: Comments must be received by December 19, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–256–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Systems and Equipment Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7511; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–256–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–256–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–1A11 and CL–600–2A12 series airplanes. TCA advises it has received a report of an auxiliary power unit (APU) stopping while the airplane was on the ground. Investigation revealed that the problem was caused by a failure of the anti-noise (electromagnetic interference) filter on the APU fuel pump assembly. The filter had a hole through the metal casing caused by electrical arcing between the internal wiring and the casing of the filter. This condition, if not corrected, could result in fuel tank explosion or fire.

Explanation of Relevant Service Information

The manufacturer has issued Bombardier Canadair Challenger Alert Service Bulletin A600–0644, Revision 01, dated March 31, 1995 (for Model CL–600–1A11 series airplanes), and Alert Service Bulletin A601–0441, Revision 01, dated March 31, 1995 (for Model CL–600–2A12 series airplanes). These service bulletins describe procedures for replacement of the anti-noise filter on the standby and APU fuel pump assemblies with a new filter. Accomplishment of the actions specified in the alert service bulletins is intended to adequately address the identified unsafe condition.

TCA classified these alert service bulletins as mandatory and issued Canadian airworthiness directive CF–97–02, dated February 25, 1997, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletins described previously.

Cost Impact

The FAA estimates that 84 Bombardier Model CL–600–1A11 and CL–600–2A12 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $5,689 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $578,676, or $6,889 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant

economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier Inc. (Formerly Canadair): Docket 97–NM–256–AD.

Applicability: Model CL–600–1A11 series airplanes, as listed in Bombardier Canadair Challenger Alert Service Bulletin A600–0644, Revision 01, dated March 31, 1995; and Model CL–600–2A12 series airplanes, as listed in Bombardier Canadair Challenger Alert Service Bulletin A601–0441, Revision 01, dated March 31, 1995; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing between the internal wiring and casing of the anti-noise filter on the standby and auxiliary power unit (APU) fuel pump assemblies, and consequent increased risk of fuel tank explosion or fire, accomplish the following:

(a) Within 100 flight hours after the effective date of this AD, replace the anti-noise filter on the standby and auxiliary power unit (APU) fuel pump assemblies with a new filter, in accordance with Part B of Bombardier Canadair Challenger Alert Service Bulletin A600–0644, Revision 01, dated March 31, 1995 (for Model CL–600–1A11 series airplanes), or Bombardier Canadair Challenger Alert Service Bulletin A601–0441, Revision 01, dated March 31, 1995 (for Model CL–600–2A12 series airplanes); as applicable.

(b) As of the effective date of this AD, no person shall install on any airplane a fuel pump having part number (P/N) 600–62966–25 or 600–62966–27 with an anti-noise filter having P/N 160–151501 (prior to revision H stamped on the part) installed, on any airplane.

(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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–97–02, dated February 25, 1997.

Issued in Renton, Washington, on November 13, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30328 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–13]

Proposed Establishment of Class C Airspace; Hayden, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would establish Class E Airspace at Hayden, CO. The development of two new Standard Instrument Approach Procedures (SIAP's) at the Yampa Valley Airport, Hayden, CO, utilizing the Global Positioning System (GPS) has made this proposition necessary. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to accommodate these SIAP's and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before January 5, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 97–ANM–13, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–13, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

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. 97–ANM–13.'' 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 the light of comments received. All comments submitted will be available for examination at the address listed

above 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, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Hayden, CO. This amendment would provide airspace necessary to fully encompass the GPS–A and the GPS–B SIAP's to the Yampa Valley Airport, Hayden, CO. This proposal would make a 700-foot Class E area with a 6.9 mile radius around the Yampa Valley Airport with an extension to the northwest and an extension to the southeast to meet necessary airspace criteria for aircraft transitioning between the terminal and en route environments. The FAA establishes Class E airspace extending upward from 700 feet AGL where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is to provide safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the Yampa Valley Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 6, 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, if promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Hayden, CO [New]

Yampa Valley Airport, CO
(Lat. 40°28′52″ N, long. 107°13′04″ W)
Hayden VOR/DME
Lat. 40°31′12″ N, long. 107°18′18″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Yampa Valley Airport, and within 4 miles each side of the Hayden VOR/DME 301° radial extending from the 6.9-mile radius to 10.1 miles northwest of the VOR/DME, and within 4 miles each side of the Hayden VOR/DME 118° radial extending from the 6.9-mile radius to 16.1 miles southeast of the VOR/DME; excluding the Craig, CO Class E airspace area.

* * * * *

Issued in Seattle, Washington, on October 31, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–30354 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–25]

Proposed Amendment to Class E Airspace; Owensboro, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace areas at Owensboro, KY. A VOR Runway (RWY) 5 Standard Instrument Approach Procedure (SIAP) has been developed for Owensboro-Daviess County Airport. Additional controlled airspace is needed to accommodate the SIAP and for IFR operations at the airport. This proposal would provide a southwest extension to the existing Class D surface area and increase the radius of the Class E airspace that extends upward from 700 feet above the surface of the earth.

DATES: Comments must be received on or before December 19, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 97–ASO–25, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5581.

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 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. 97–ASO–25.'' The postcard will be date/time stamped and returned to the commenter. All communications received 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 the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to amend the Class E airspace areas at Owensboro, KY. A VOR RWY 5 SIAP has been developed for Owensboro-Daviess County Airport. Additional controlled airspace is needed to accommodate the SIAP and for IFR operations at the airport. This proposal would provide a southwest extension to the existing Class D surface area and increase the radius of the Class E airspace that extends upward from 700 feet above the surface of the earth. Class E airspace areas designated as an extension to a Class D or Class E surface area, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 6004 and 6005, respectively, of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

ASO KY E4 Owensboro, KY [Revised]

Owensboro-Daviess County Airport, KY
(Lat. 37°44′25″ N, long. 87°10′23″ W)
Owensboro VOR/DME
(Lat. 37°44′37″ N, long. 87°09′57″ W)

That airspace extending upward from the surface within 3 miles each side of Owensboro VOR/DME 351°, 177°, and 223° radials, extending from the 4.1-mile radius of Owensboro-Daviess County Airport to 7 miles north, south and southwest of the Owensboro VOR/DME. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5 Owensboro, KY [Revised]

Owensboro-Daviess County Airport, KY
(Lat. 37°44′25″ N, long. 87°10′23″ W)

That airspace extending upward from 700 feet or more above the surface within a 7.2-mile radius of Owensboro-Daviess County Airport.

* * * * *

Issued in College Park, Georgia, on November 7, 1997.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–30356 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 333, 347, and 348

[Docket Nos. 80N–0476, 78N–0301, 78N–0021, and 75N–0183]

RIN 0910–AA01

Antifungal Drug Products for Over-the-Counter Human Use; External Analgesic Drug Products for Over-the-Counter Human Use; Skin Protectant Drug Products for Over-the-Counter Human Use; and Topical Antimicrobial Drug Products for Over-the-Counter Human Use; Reopening of Administrative Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of administrative records.

SUMMARY: The Food and Drug Administration (FDA) is announcing the reopening of the administrative records for four rulemakings to include safety and effectiveness data on over-the-counter (OTC) vaginal douche drug product ingredients that were previously considered in the advance

notice of proposed rulemaking for OTC vaginal drug products. The agency is reopening the following rulemakings for consideration of data on vaginal douche drug products: (1) Antifungal drug products, (2) OTC external analgesic drug products (3) OTC skin protectant drug products and (4) OTC topical antimicrobial drug products. This action is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Submit written comments by February 17, 1998.

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: Helen Cothran, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 13, 1983 (48 FR 46694), FDA published under 21 CFR 330.10(a)(6), an advance notice of proposed rulemaking to establish a monograph for OTC vaginal drug products, together with the recommendations of the Advisory Review Panel on OTC Contraceptives and Other Vaginal Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in OTC vaginal drug products. In its report, the Panel recommended Category I (i.e., safe and effective) status for 1 to 3 percent potassium sorbate and 0.15 to 0.3 percent povidone-iodine as a douche for the relief of minor vaginal itching, irritation, and soreness (48 FR 46694 at 46704 to 46706). The Panel also recommended the following ingredients as Category I in a douche formulation to remove vaginal discharge and vaginal secretions, for a mild detergent action, and to thin out vaginal mucus discharge: 0.002 percent dioctyl sodium sulfosuccinate (docusate sodium), 0.0176 percent nonoxynol 9, 0.088 percent octoxynol 9, and 0.01 to 0.02 percent sodium lauryl sulfate (48 FR 46706 to 46707). In the preamble to the Panel's report (48 FR 46694 to 46695), the agency did not allow the marketing of potassium sorbate for relief of minor vaginal irritation because it was considered a new drug (had not been marketed for a material time and extent).

In the **Federal Register** of February 3, 1994 (59 FR 5226), the agency issued a notice to withdraw the advance notice of proposed rulemaking of October 13, 1983. This action was taken in part because the agency determined that some of the Panel's recommended labeling indications related to cosmetic claims and not drug claims. The agency also stated that the intended use of a product will be considered in determining whether it is a cosmetic, a drug, or both (59 FR 5226 at 5231). In addition, recommended labeling indications and ingredients used for minor irritation, itching, or soreness are not unique to the vaginal area and are already being considered in other OTC drug rulemakings (e.g., antifungal, antimicrobial, and external analgesic). Therefore, the agency stated that those ingredients and claims would be considered in those other rulemakings, as appropriate.

II. Recent Developments

In the **Federal Register** of March 27, 1997 (62 FR 14683), the agency announced that its Nonprescription Drugs Advisory Committee (NDAC) would hold a public meeting on April 15, 1997, to discuss a possible association between vaginal douching and adverse consequences. The notice stated that FDA is aware of a number of case-control epidemiologic studies in the literature that suggest a possible association between vaginal douching and several conditions, such as pelvic inflammatory disease, ectopic pregnancy , and cervical cancer (Ref. 1). At the April 15, 1997, meeting, NDAC members were joined by representatives from two other FDA advisory committees, Reproductive Health Drugs and Anti-infective Drugs, as well as representatives from the Center for Food Safety and Applied Nutrition and the Center for Devices and Radiological Health. The Committees discussed issues relating to behavioral, epidemiological, and microbiological aspects of vaginal douching. Committee members felt that there was a suggestive association between vaginal douching and ectopic pregnancy and pelvic inflammatory disease, but that more data and further research were needed to support such an association. Some members stated that a possible association between douching and tubal infertility also needed more investigation. The Committees did not find any evidence of a relationship between vaginal douching and cervical carcinoma. Some members expressed concern that certain individuals who douche, e.g., those with sexually transmitted diseases or multiple sexual partners, may be at increased risk for ectopic pregnancy, tubal disease, or tubal infertility. The Committees were also concerned about the risks and benefits/efficacy of vaginal douche products. The Committee members stressed that labeling for these products should be easy to read and understand, and should provide consistent information across the broad product class. The Committees encouraged the use of educational programs for both consumers and health care providers as a way to expand the public's knowledge about use of these products (Ref. 2).

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter from D. Bowen, FDA, to R.W. Soller, Nonprescription Drug Manufacturers Association, coded LET 105, Docket No. 75N–0183, Dockets Management Branch.

2. Comment No. TR1, Docket No. 80N–0476, Dockets Management Branch.

IV. Reopening of the Administrative Records

Because the issues concerning the safety of vaginal douching also have an impact on the agency's review of the safety and effectiveness of all OTC vaginal douche drug products, the agency is reopening the administrative records for the rulemakings for OTC antifungal drug products (Docket No. 80N–0476), (2) OTC external analgesic drug products (Docket No. 78N–0301), (3) OTC skin protectant drug products (Docket No. 78N–0021), and (4) OTC topical antimicrobial drug products (Docket No. 75N–0183). This action is to specifically allow for submission of data on the issues raised at the April 15, 1997, meeting. The agency also requests safety and effectiveness data on the vaginal douche drug product ingredients that were discussed at that meeting.

Interested persons may submit comments on OTC vaginal douche drug products to the applicable docket number(s) based on the ingredient's labeling claim(s), intended use, or mechanism/mode of action. For example, data on povidone-iodine for the relief of minor vaginal itching and irritation may be submitted to the external analgesic rulemaking, but if relief of itching is due to an antifungal effect, i.e., killing the fungus, data should be submitted to the antifungal rulemaking . Likewise, if data support the use of nonoxynol 9 for the relief of minor vaginal itching and irritation because of an antimicrobial action, data should be submitted to the antimicrobial rulemaking. Interested

persons should determine the appropriate rulemaking to which data should be submitted. Comments on other vaginal drug products or issues should not be submitted at this time.

Submit written comments on or before February 17, 1998 to the Dockets Management Branch (address above). Three copies of any comments are to be submitted, except that individuals may submit one copy. If comments could be submitted to several dockets, they may be submitted to one docket and cross-referenced in the other docket(s). All comments are to be identified with the appropriate docket number(s) found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 12, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–30410 Filed 11–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

[SPATS No. LA–017–FOR]

Louisiana Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Louisiana regulatory program (hererinfafter the ''Louisiana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and/or additions of regulations pertaining to definitions, request for hearing, permitting requirements, small operator assistance program, bond release requirements, performance standards, and enforcement procedures/civil penalties. The amendment is intended to revise the Louisiana program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Louisiana program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.s.t., December 19, 1997. If requested, a public hearing on the proposed amendment will be held on December 15, 1997. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t. on December 4, 1997.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

Copies of the Louisiana program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone (918) 581–6430.

Department of Natural Resources, Office of Conservation, Injection and Mining Division, 625 N. 4th Street, P.O. Box 94275, Baton Rouge, LA 70804, Telephone: (504) 342–5540.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Telephone (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Louisiana Program

On October 10, 1980, the Secretary of the Interior conditionally approved the Louisiana program. General background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Louisiana program can be found in the October 10, 1980, **Federal Register** (45 FR 67340). Subsequent actions concerning the Louisiana program and program amendments can be found at 30 CFR 918.15 and 918.16.

II. Description of the Proposed Amendment

By letter dated October 24, 1997 (Administrative Record No. LA–362), Louisiana submitted a proposed amendment to its program pursuant to SMCRA. Louisiana submitted the proposed amendment in response to a June 17, 1997, letter (Administrative Record No. LA–361) that OSM sent to Louisiana in accordance with 30 CFR 732.17(c). Louisiana proposes to amend the Louisiana Surface Mining Regulations. The full text of the proposed program amendment submitted by Louisiana is available for public inspection at the locations listed above under **ADDRESSES.** A brief discussion of the proposed amendment is presented below.

A. Section 105. Definitions

1. Louisiana proposes to revise its definition for ''other treatment facilities.''

2. Louisiana proposes to add a definition for ''previously mined area.''

3. Louisiana proposes to add a definition for ''qualified laboratory.''

B. Section 2537. Cross-Sections, Maps and Plans

Louisiana proposes to delete paragraph 2537.11. that requires cross-sections, maps and plans in the permit applications to show sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area.

C. Section 2725. Reclamation Plan: Ponds, Impoundments, Banks, Dams and Embankments

1. Louisiana proposes to revise paragraph 2725.A. by adding ''siltation structure'' to the types of ponds, impoundments, banks, dams and embankments requiring a general reclamation plan, and by adding a provision that requires each application to include a detailed reclamation plan for each proposed containment structure.

2. At paragraph 2725.A.2., Louisiana proposes to delete the existing language and to replace it with language that adds specific references to the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 criteria for dam classification and requires compliance with this technical release if structures meet or exceed the size or other criteria of the Mine Safety and Health Administration.

3. Louisiana proposes to revise paragraph 2725.A.3. to refer to structures that are not included in paragraph 2725.A.2.

4. At paragraph 2725.A.3.a., Louisiana proposes to require qualified, registered, professional engineers to certify all coal processing waste dams and embankments covered by sections 5375 through 5395.

5. At section 2725, Louisiana proposes to add new paragraph C.1. that specifies that for impoundments not included in paragraph 2725.A.2., engineering design standards shall ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in section 5333.

6. Louisiana proposes to revise paragraph 2725.F. by deleting the phrase, ''If the structure is 20 feet or higher or impounds more than 20 acre-feet,'' and replacing it with the phrase, ''If the structure meets the Class B or C criteria for dams in TR–60 or meets the size or other criteria of 30 CFR 77.216(a).''

D. Section 2907. Prime Farmland

At section 2907, Louisiana proposes to add new paragraph C.5. to read as follows:

The aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained.

E. Section 3705. Eligibility for Assistance

1. At paragraph 3705.A.2., Louisiana proposes to change from 100,000 to 300,000 tons the probable total actual and attributed production of coal that an applicant for small operator assistance cannot exceed during any consecutive 12-month period either during the term of his or her permit or during the first five years after issuance of his or her permit, whichever period is shorter.

2. Currently at paragraph 3705.A.2.a., applicants for small operator assistance, with an ownership interest in other coal production operations, have a pro rata share of coal produced by those operations attributed to their total coal production in any consecutive 12-month period if they have more than a five percent ownership interest in those other coal production operations. Louisiana proposes to change the percentage of ownership interest from more than five percent to more than ten percent.

3. Currently at paragraph 3705.A.2.b., applicants for small operator assistance have a pro rata share of coal produced by other coal production operations attributed to their total coal production in any consecutive 12-month period if the coal operators of the other coal production operations have more than a five percent ownership interest in the applicant for small operator assistance. Louisiana proposes to change the percentage of ownership interest from more than five percent to more than ten percent.

F. Section 3711. Program Services and Data Requirements

1. Louisiana proposes to revise paragraph 3711.A. by adding the phrase, ''and provide other services,'' to closely follow the Federal regulation at 30 CFR 795.9(a).

2. Louisiana proposes to revise paragraph 3711.B.1. by adding the phrase, ''including the engineering analyses and designs necessary for the determination,'' to closely follow the Federal regulation at 30 CFR 795.9(b)(1).

3. Louisiana proposes to revise paragraph 3711.B.2. by adding the phrase, ''the drilling and,'' to closely follow the Federal regulation at 30 CFR 795.9(b)(2).

4. Louisiana proposes to add new paragraph 3711.B.3., ''the development of cross-section maps and plans required by § 2537,'' to closely follow the Federal regulation at 30 CFR 795.9(b)(3).

5. Louisiana proposes to add new paragraph 3711.B.4, ''the collection of archaeological and historic information and related plans required by §§ 2505.A.2. and 2731 and any other archaeological and historic information required by the office,'' to closely follow the Federal regulation at 30 CFR 795.9(b)(4).

6. Louisiana proposes to add new paragraph 3711.B.5., ''pre-blast surveys required by § 2707; and'' to closely follow the Federal regulation at 30 CFR 795.9(b)(5).

7. Louisiana proposes to add new paragraph 3711.B.6, ''the collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by § 2713, and information and plans for any other environmental values required by the office under the act.'' to closely follow the Federal regulation at 30 CFR 795.9(b)(6).

G. Section 3717. Applicant Liability

1. At paragraph 3717.A., Louisiana proposes to revise this paragraph by adding the phrase, ''A coal operator,'' and by deleting the words ''laboratory'' and ''performed'' to closely follow the Federal regulation at 30 CFR 795.12(a).

2. Louisiana proposes to revise paragraph 3717.A.2. by replacing the ''applicant's'' actual and attributed annual production of coal for all locations with the ''operator's'' actual and attributed annual production of coal for all locations. Also, Louisiana proposes to change the actual and attributed annual production of coal for all locations from 100,000 to 300,000 tons during the 12 months immediately following the date on which the permit was originally issued.

3. Louisiana proposes to revise paragraph 3717.A.3. concerning permits that are sold, transferred, or assigned by changing the transferee's total actual and attributed annual production of coal from 100,000 to 300,000 tons during the 12 months immediately following the date on which the permit was originally issued.

H. Section 4501. Procedures for Seeking Release of Performance Bond

1. Louisiana proposes to add new paragraph 4501.A.3. to read as follows:

The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

2. With the addition of this new paragraph, Louisiana proposes to re-number existing paragraph A.3. as A.4.

I. Section 5333. Hydrologic Balance: Impoundments

1. Louisiana proposes to add new paragraph 5333.A.1 that requires impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, October 1985), ''Earth Dams and Reservoirs,'' 1985 to comply with the ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60. Louisiana also proposes to incorporate by reference the above technical release.

2. Louisiana proposes to redesignate existing paragraphs 5333.A.1. through 5333.A.12. as paragraphs 5333.A.2 through 5333.A.13.

3. Louisiana proposes to revise redesignated paragraph 5333.A.4. (previously paragraph 5333.A.3.) by deleting all of its language except for the word ''Stability.'' The State also proposes to add new paragraphs a. and b. containing the following language:

a. An impoundment meeting the Class B or C criteria for dams in TR–60, or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

b. Impoundments not included in § 5333.A.4.a. except for a coal mine waste

impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of § 2725.C.1.

4. At redesignated paragraph 5333.A.6. (previously paragraph 5333.A.5.),

Louisiana proposes to revise this paragraph by adding the following language:

For an impoundment meeting the Class B or C criteria for dams in TR–60, or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

5. At redesignated paragraph 5333.A.9. (previously paragraph 5333.A.8.), Louisiana proposes to revise this paragraph by deleting the existing language and replacing it, and by adding new paragraphs A.9.a., a.i., and a.ii., and A.9.b., b.i., b.ii., and b.iii. The new language pertains to the types of spillways that shall be designed and constructed for impoundments: (a.) meeting the Class B or C criteria for dams in TR–60, the emergency spillway hydrograph criteria in the ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60, or greater event as specified by the State; (b.) meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a 100-year 6-hour event, or greater event as specified by the State; and (c.) not included in § 5333.A.9.b.i. and ii., 25-year 6-hour or greater event as specified by the State.

6. At redesignated paragraph 5333.A.12 (previously paragraph 5333.A.11.), Louisiana proposes to revise this paragraph by deleting the existing language and replacing it with language pertaining to impoundments ''meeting'' and ''not meeting'' the SCS Class B or C criteria for dams in TR–60, or the size or other criteria in 30 CFR 77.216. The State also proposes how often and by whom these impoundments must be examined and what must be looked for during the examinations.

7. Louisiana proposes to revise paragraph 5333.C.2. by deleting the existing language and replacing it with new language and by adding new paragraphs C.2.a. and C.2.b. The new language pertains to the State's option to approve temporary impoundments that are constructed to control runoff, from the design precipitation event, primarily through storage of the runoff.

J. Section 5411. Backfilling and Grading: Thin Overburden

Louisiana proposes to revise paragraph 5411.A. by deleting the existing language and replacing it with new language, and by adding new paragraphs A.1. and A.2. The proposed new language for these paragraphs contains the definition for and explanations pertaining to ''thin overburden.''

K. Section 5413. Backfilling and Grading: Thick Overburden

Louisiana proposes to revise paragraph 5413.A. by deleting the existing language and replacing it with new language, and by adding new paragraphs A.1. and A.2. The proposed new language for these paragraphs contains the definition for and explanations pertaining to ''thick overburden.''

L. Section 5503. Prime Farmland: Soil Removal

Louisiana proposes to revise paragraph 5503.A.2. by adding language to require coal operators:

to separately remove the B horizon of the soil, a combination of B horizon and underlying C horizon, or other suitable soil material to provide the thickness of suitable soil required by paragraph 5507.A.1. that will create a reconstructed soil of equal or greater productivity capacity than that which existed before mining, except as approved by the regulatory authority where the B or C soil horizons would not otherwise be removed and where soil capabilities can be retained;

M. Section 5507. Prime Farmland: Soil Replacement

Louisiana proposes to revise paragraph 5507.A.4. by deleting the existing language and replacing it with the following language:

The operator shall replace the B horizon, C horizon, or other suitable material specified in § 5503.A.2. to the thickness needed to meet the requirements of § 5507.A.1. In those areas where the B or C horizons were not removed but may have been compacted or otherwise damaged during the mining operation, the operator shall engage in deep tilling or other appropriate means to restore premining capabilities.

N. Section 6507. Service of Notices of Violation and Cessation Orders

Louisiana proposes to revise paragraph 6507.A.2. by adding language to its regulation regarding how notices of violations and cessation orders are to be served. The added language allows the State to serve the person to whom the notice or order was issued by any means consistent with the rules governing service of a summons and complaint under the Louisiana Rules of Civil Procedure.

O. Section 6913. Procedures for Assessment of Civil Penalties

Louisiana proposes to revise paragraph 6913.B by adding language to its regulation regarding how copies of the proposed assessment and the worksheet showing the computation of the proposed assessment are to be served. The added language allows the State to serve the person to whom the notice or order was issued by any alternative means consistent with the rules governing service of a summons and complaint under the Louisiana Rules of Civil Procedure.

P. Section 6915. Procedures for Assessment Conference

Louisiana proposes to revise paragraph 6915.B.1 by changing the time when the assessment conference is to be held from ''within 60 days from the date of the issuance of the proposed assessment or the end of the abatement period, whichever is later'' to ''within 60 days from the date the conference request is received or the end of the abatement period, whichever is later.'' Louisiana also proposes to add that failure by the State to hold the conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

Q. Section 6917. Request for Hearing

Louisiana proposes to change from 15 days to 30 days the amount of time a person has to submit a petition for requesting a hearing after the date of service of the conference office's action.

R. Section 7105. Procedure for Assessment of Individual Civil Penalty

Louisiana proposes to revise paragraph 7105.C. by adding language to its regulation regarding when service of a notice of proposed assessment and included information shall be deemed complete. The added language states that service is complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Louisiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tusla Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on December 4, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

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

National Environment Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 7, 1997.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 97–30304 Filed 11–18–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5925–2]

National Oil and Hazardous Substances; Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete Coalinga Asbestos Mine Site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 9 announces its intent to delete the Coalinga Asbestos Mine Site from the National Priorities list (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of California Department of Toxic Substances Control have determined that all appropriate CERCLA response actions have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of this Site from the

NPL may be submitted by December 19, 1997.

ADDRESSES: Comments may be mailed to: Keith Takata, Director, Superfund Programs, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

Comprehensive information on this site is available through the EPA Region 9 public docket which is located at EPA Region 9's Superfund Records Center, at the address above, and is available for viewing between 8 a.m. and 5 p.m., Monday through Friday, excluding holidays. Additional information on the Coalinga Asbestos Mine Site is also available for viewing at the site repository located at: City of Coalinga Public Library, 305 North Fourth Street, Coalinga, CA 93210, (209) 935–1676.

FOR FURTHER INFORMATION CONTACT: Richard Procunier, U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–2219.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region 9 announces its intent to delete the Coalinga Asbestos Mine Site (EPA ID# CAD980817217), Coalinga, California, from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, and requests comments on this deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this site for thirty days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Coalinga Asbestos Mine Site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from, or recategorized on, the NPL when no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate response under CERCLA has been implemented and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment, and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. The Coalinga Asbestos Mine Site has two operable units: the City of Coalinga Operable Unit (City Unit) and the Coalinga Mine Site/ Johns-Manville Mill Operable Unit (JM Unit). The first five-year review for the City Unit was completed in April 1996. The first five-year review for the JM Unit is expected to be completed in late 1997. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Wherever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the proposed deletion of this Site: (1) EPA Region 9 has recommended deletion and has prepared the relevant documents; (2) the State of California has concurred with the proposed deletion decision; (3) a notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and (4) all relevant documents have been made available for public review in the local Site information repository.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in section II of this document, section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this Site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary, if one is prepared, will be made available to interested parties by the Regional Office.

IV. Basis for Intended Site Deletion

A. Unit Background

City Unit

The City of Coalinga Unit is privately owned and consists of approximately 107 acres of land situated between 4th Street and the intersection of Lucille Avenue and Highway 198 at the southwestern end of the City of Coalinga, Fresno County, California. The nearest population center is Coalinga (approximate population of 9850), located immediately to the northeast. The surrounding area is mixed use, consisting of industrial, agricultural, commercial and residential properties.

JM Unit

The JM Unit is a privately owned, 120-acre tract of land located in upper Pine Canyon on the southern flank of the Joaquin Ridge in the Diablo Range, western Fresno County, California. It is located approximately ½ mile down slope from the New Idria Formation, a 48-square mile outcrop margin of naturally occurring chrysotile asbestos. The nearest population center is Coalinga located about 16 miles to the southeast. Areas adjacent to the JM Unit are rural; land uses include mining, ranching, farming and recreation (camping, hunting, hiking, mineral collecting, and riding off-highway vehicles).

B. Site History

City Unit

The Southern Pacific Railroad property within the original 107-acre City Unit consisted partly of a portion of the original operating right-of-way acquired by Southern Pacific Railroad

Company (a predecessor of Southern Pacific Transportation Company) pursuant to the July 27, 1866 Act of Congress, and partly of ancillary lands acquired pursuant to the same Act patented July 10, 1894. During Southern Pacific's ownership, several properties were leased to various entities which were active in the milling, manufacture, storage and/or transportation of asbestos materials from the mid-1950's until approximately 1980.

JM Unit

The Southern Pacific Railroad acquired the property on which the JM Unit is located as part of a land grant under the 1871 Railway Act. In the mid-1950's researchers discovered that chrysotile asbestos from the New Idria Formation could be milled to yield a marketable short-fiber asbestos product. The Southern Pacific Land Company (SPLC) leased the JM Unit for a period of 25 years to the Coalinga Asbestos Company beginning about 1956. This joint venture, which was comprised of the Johns-Manville Corporation, Kern County Land Company, and private investors, operated an asbestos ore processing mill at the JM Unit from approximately 1962 through mid-1974. During this period, ore was processed from several nearby open pit mines, including the Jensen Mine and the Christy Pit. In November 1975, the Coalinga Asbestos Company assigned the lease to the Marmac Resource Company/Mareco, which used the property to conduct a chromite milling operation. Although all milling operations were believed to have ceased in October 1977, Marmac retained the lease until July 31, 1981. The current owner of the JM Unit is Pine Canyon Land Company, successor-in-interest to SPLC.

C. Site Discovery

In 1980, the Metropolitan Water District (MWD) of Southern California detected asbestos in water samples from the California Aqueduct. An extensive sampling program conducted along the Aqueduct in August and September of 1980 suggested that the area in which the JM Unit was located was, in part, a possible source of asbestos into the California Aqueduct. In addition, EPA sampled mill tailings at the JM Unit; analytical results obtained from using polarized light microscopy showed the tailings contained 20% to 40% asbestos.

During investigation of the Coalinga Asbestos Mine site and the nearby Atlas Mine site, EPA conducted an airborne asbestos sampling program in which high asbestos readings were measured in the City of Coalinga. Further investigation revealed that asbestos had been transported from the mines and mills to storage areas within the City of Coalinga for handling and shipment. Soil sampling confirmed the presence of uncontrolled hot spots of asbestos and nickel contamination over a 107-acre area in the City of Coalinga.

The Site became the City of Coalinga Operable Unit of the Atlas Mine Site and the Johns-Manville Coalinga Asbestos Mill Site. It was divided into four areas: the Marmac Warehouse, the Storage Yard, the Atlas Shipping Yard, and the U.S. Asbestos Company. The northern end of the 107-acre site was connected to the Atlas Mine Site, while the southern end was connected to the Johns-Manville Mill Site. Although the cleanup could have proceeded as two separate Operable Units, EPA decided to combine it into one site cleanup, designated an operable unit for each of the two NPL Sites.

Risks posed by the JM Unit were evaluated using the Hazard Ranking System on June 14, 1983 and the JM Unit (designated the Coalinga Asbestos Mine Site) was proposed for placement on the National Priorities List on September 8, 1983. It was finalized on the NPL on September 21, 1984.

D. Remedial Investigation/Feasibility Study

City Unit

In August 1987, EPA issued an administrative order pursuant to CERCLA section 106 (Order 87–04) to Southern Pacific Transportation Company (SPTC) requiring it to conduct a Remedial Investigation at the City of Coalinga site. Soil sampling confirmed the presence of uncontrolled hot spots of asbestos and nickel contamination over a 107-acre area in the City of Coalinga. EPA ordered SPTC to prepare an Operable Unit Feasibility Study (OUFS) to develop and evaluate remedial alternatives for the site, which became the City of Coalinga Operable Unit of both the Coalinga Asbestos Mine Site and the Atlas Mine Site.

At the City of Coalinga Unit, Remedial Investigation/Feasibility Study (RI/FS) activities commenced in 1987 with the implementation of the Hazardous Substance Containment Plan and were completed in December 1988 with the completion of the FS. Implementation of the Hazardous Substance Containment Plan provided measures to initially stabilize the areas where asbestos had been documented by EPA. These measures included fencing and posting, dust suppression, and stabilization of building structures. Subsequently, a site sampling program was undertaken to characterize the extent of asbestos present in soils in the area. In addition to soil sampling, air samples and groundwater samples were collected.

Upon completion of the site characterization, the FS was performed to evaluate remedial alternatives for the site. The FS evaluated a number of remedial alternatives for handling contaminated soils including no action, fencing, capping, soil stabilization, on-site disposal, chemical fixation, and off-site disposal. Onsite disposal of soils containing asbestos in an engineered waste management unit was the selected alternative.

JM Unit

At the JM Unit, RI/FS activities were initiated in 1985 and completed in 1990. The RI described site characterization activities and technical analyses, which included soil and surface water sampling, hydrologic and sediment transport modeling, geologic mapping, an ecological assessment and a cultural resources investigation. The location and configuration of asbestos-containing materials at the JM Unit were assessed using aerial photographs, field observations, and the collection and analysis of samples obtained from surface materials, exploratory borings, pits, and trenches. Geotechnical investigation activities included slope stability analyses, seismic engineering evaluations, and testing of site materials for permeability, moisture content, density, shear strength, and Atterberg Limits. A detailed off-site source characterization study was also performed.

E. ROD Findings and Remedial Activities

City Unit

After consideration of public comments, EPA issued a Record of Decision (ROD) for the City Unit on July 19, 1989. The ROD required the collection and on-site disposal of all asbestos ore waste and other mining waste material; decontamination of all buildings, structures and other equipment; regrading of excavated areas with clean material (containing less than or equal to one percent asbestos by Phased Light Microscopy (PLM)); a deed restriction on the area where the waste management unit would be constructed and maintained; and a long term operation and maintenance program to maintain the integrity of the waste management unit. Southern Pacific agreed to implement the selected remedy as defined in the ROD by entering into a Consent Decree with the EPA on July 27, 1989. The design report

presenting the technical specifications for the construction of the on-site asbestos waste management unit was approved by EPA on October 5, 1989.

Remedial action consisted of excavation of soils in areas where the site characterization study indicated the presence of asbestos greater than 1% by PLM. The soils were consolidated in an on-site waste management unit with a final capacity of 26,200 cubic yards. In addition, asbestos-containing materials within building structures such as transite panels, mining ore, and other debris were removed to the waste management unit. The building structures were then pressure washed. Excavated areas and buildings were sampled to verify that the action levels had been met. The excavated areas were regraded for proper drainage. The remedy was certified to be operational and functional as specified in the ROD and Consent Decree by the resident engineer supervising the work. The areas previously defined as contaminated were certified to be below the EPA cleanup level. Remedial construction activities commenced in June of 1990 and were completed in January 1992. EPA issued its certificate of completion in April 1992. Homes and a large retail store have been built on formerly contaminated land.

JM Unit

After consideration of public comments, EPA issued a Record of Decision (ROD) for the JM Unit on September 21, 1990. The remedial action selected in the ROD addressed the problem of the asbestos ore and asbestos mill tailings at the JM Unit in the context of a remote and largely rural area that is close to large amounts of naturally occurring asbestos. The ROD required grading of asbestos tailings; construction of a stream diversion to channel surface water away from the tailings pile; improvements to an existing sediment trapping dam; restricted access to disturbed areas within the mill area; a revegetation pilot study and revegetation if technically feasible; dismantling of an abandoned mill; improvements to the road through the Mill Area to suppress dust; a deed restriction to ensure preservation of the remedy; and visual inspections of the remedy. The responsible parties for the JM Unit agreed to implement the selected remedy as defined in the ROD by entering into a Consent Decree with the EPA on August 11, 1992.

A Remedial Design Work Plan (RDWP) for the JM Unit was submitted to EPA on February 25, 1993, which provided the overall management strategy for performing the design, construction, operation and maintenance, and monitoring of the remedial action. The RDWP was approved by EPA on April 1, 1993. Other submittals approved by EPA included the 30% Design Package, the 90% Design Package, and the Final Design Package.

Remedial action at the JM Unit consisted of mill dismantling; regrading the tailings pile; cross-canyon stream diversion; improvements to an existing sediment trapping dam; access restrictions; deed restrictions; revegetation pilot study; revegetation and paving the access road. The remedy has been certified to be operational by the Supervising Engineer and is in compliance with the Consent Decree, the ROD, the approved final Remedial Design, the NCP, and ARARs. At the JM Unit, remedial action was started on May 17, 1993 and was completed prior to the pre-final inspection on April 28, 1994.

F. Community Relations Activities

Commencing in June 1987, EPA personnel met periodically with members of the Coalinga City Council. Several different persons designated by the City to be the Council's contact with EPA were kept informed about the investigation status. The Operable Unit Feasibility Study (OUFS) report was released for public comment on February 9, 1989. This document along with other site reports and the administrative record were made available to the public at an information repository established at the City of Coalinga Public Library.

The public comment period commenced on February 9, 1989 and closed on March 24, 1989. A public meeting was held on February 22, 1989 at the City Council Chambers. Prior to the beginning of the public comment period, EPA published a notice in the Fresno Bee and the Coalinga Weekly Courier. The notice briefly described the proposed plan and announced the public comment period and the public meeting. The notice also announced the availability of the proposed plan and the OUFS for review at the information repository. A fact sheet describing the proposed plan was delivered to the information repository. Copies of the fact sheet were mailed to the EPA general mailing list for the Atlas Mine and Johns-Manville Coalinga Mill Sites, which included approximately 300 members of the general public, elected officials and media representatives.

In July 1992 EPA issued Fact Sheets which were mailed to the general mailing list giving an update on clean-up activities in the Coalinga Area, including the Atlas and Coalinga Asbestos Mines and the City of Coalinga Superfund sites. In June 1993, a newspaper advertisement was placed in the Coalinga Record to notify nearby residents of the initiation of remedial activities at the JM Unit and to collect names and addresses of parties interested in being placed on a mailing list for future information. Postage-paid, pre-addressed response cards were also sent to residents near the JM Unit to determine if the residents wished to be placed on the mailing list. In March 1997, EPA issued another Fact Sheet to the general mailing list.

G. Summary of Operation and Maintenance

Long-term operation and maintenance at each Unit is being performed under the direction of the relevant responsible party and oversight by the California Department of Toxic Substances Control. O&M activities for the City Unit currently include annual inspections for cap integrity, surface water ponding, fence integrity and repairs as necessary. There is also a provision for specific monitoring in the event of a natural disaster (100 year flood, catastrophic earthquake). The Operations and Maintenance Plan for the JM Unit is Appendix G of the Remedial Action Completion Report, dated January 10, 1995. O&M activities for the JM Unit include inspection of engineering systems, sediment removal, gate control, repairs, and reporting. There is also a provision for specific monitoring in the event of heavy rainfall or seismic activity of magnitude 5 or greater within 50 miles of the Site and a site caretaker. O&M activities for both Units are being conducted in accordance with the O&M Plans.

H. Protectiveness

The implemented remedies achieved the degree of cleanup and protection as described in the RODs for all pathways of exposure and no further Superfund response is needed to protect human health and the environment. Both units at the Site meet all the site completion requirements as specified in OSWER Directive 9320.2–09, Close-Out Procedures for National Priorities List Sites (Interim Final), August 1995. Long term operation and maintenance will be required to insure the integrity of controls constructed during the remedial actions. The remediation implemented at each Unit does not require any operational activities because of its permanent nature. Inspection activities, however, will be conducted. For the City Unit, maintenance activities may be required

for the cap and fence; for the JM Unit, maintenance activities may be required for stream diversions and sediment retention structures. For the City Unit, a deed restriction was recorded with the Recorder's Office, Fresno County, California, on June 22, 1990 which prohibited anyone in possession of the property from taking any actions that would interfere with the maintenance and operation of the waste management unit to be constructed pursuant to the Consent Decree. This deed restriction was amended upon completion of the remedial action to illustrate the exact placement and dimensions of the constructed waste management unit. For the JM Unit, a deed restriction recorded with the Recorder's Office, Fresno County, California, on July 2, 1993, prohibits anyone in possession of the property from taking actions that would interfere with the implementation of the remedy. Pursuant to CERCLA 121© and as provided in OSWER Directive 9355.7–02, Structure and Components of Five-Year Reviews, May 23, 1991, OSWER Directive 9355.702A, Supplemental Five-Year Review Guidance, July 26, 1994, and Second Supplemental Five-Year Review Guidance, December 21, 1996, EPA must conduct a statutory five-year review.

One of the three criteria for deletion specified that EPA may delete a site from the NPL if ''responsible parties or other parties have implemented all appropriate response actions required.'' EPA, with the concurrence of the California Department of Toxic Substances Control, believes that this criterion for deletion has been met. Consequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available at the EPA Region 9 NPL docket.

Dated: November 11, 1997.

Felicia Marcus,

Regional Administrator, Region 9.

[FR Doc. 97–30380 Filed 11–18–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–227, RM–9159]

Radio Broadcasting Services; Wasilla, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of KMBQ Corporation, requesting the allotment of Channel 273C2 to Wasilla, Alaska, as that community's second local FM transmission service. Coordinates used for this proposal are 61–37–32 and 149–24–05.

DATES: Comments must be filed on or before December 22, 1997, and reply comments on or before January 6, 1998.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: John Wells King and Amelia Brown, Esqs., Haley, Bader & Potts, 4350 North Fairfax Drive, Suite 900, Arlington, VA 22203–1633.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–227, adopted October 22, 1997, and released October 31, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–30286 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–224, RM–9177]

Radio Broadcasting Services; Monroe, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Charles D. Hall requesting the allotment of Channel 257C2 to Monroe, Utah, as the community's first local aural transmission service. Channel 257C2 can be allotted to Monroe in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.3 kilometers (0.8 miles) south in order to avoid a short-spacing conflict with vacant Channel 256A at Levan, Utah. The coordinates for Channel 257C2 at Monroe are 38–37–21 NL and 112–07–29 WL.

DATES: Comments must be filed on or before December 22, 1997, and reply comments on or before January 6, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James K. Edmundson, Gardner, Carton & Douglas, 1301 K Street, NW., Suite 900, East Tower, Washington, DC 20005 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–224, adopted October 22, 1997, and released October 31, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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

List of Subjects in 47 CFR part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–30285 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–225, RM–9173]

Radio Broadcasting Services; Olney and Archer City, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Texas Grace Communications proposing the reallotment of Channel 248C2 from Olney to Archer City, Texas; the modification of Station KRZB(FM)'s authorization to specify Archer City as its community of license; and, the allotment of Channel 270C2 at Olney, Texas, as a replacement channel. Both channels can be allotted to Archer City and Olney, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 248C2 can be allotted to Archer City with a site restriction of 0.2 kilometer (0.1 mile) southeast of the community. The coordinates for Channel 248C2 at Archer City are 33–35–36 NL and 98–37–31 WL. Channel 270C2 can be allotted to Olney with a site restriction of 5.2 kilometers (3.2 miles) west of the city. The coordinates for Channel 270C2 at Olney are 33–21–39 NL and 98–48–42 WL. In accordance with Section 1.420(i), we will not accept competing expressions of interest in the use of Channel 248C2 at Archer City or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

DATES: Comments must be filed on or before December 22, 1997, and reply comments on or before January 6, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John M Pelkey, Esq., Haley, Bade & Potts P.L.C., 4350 North Fairfax Drive, Arlington, Virginia 22203–1633 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–225, adopted October 22, 1997, and released October 31, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–30284 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–226, RM–9184]

Radio Broadcasting Services; Prineville, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Michael Mattson and Kenneth Lewetag seeking the allotment of Channel 254C3 to Prineville, OR, as the community's second local FM and third local aural service. Channel 254C3 can be allotted to Prineville in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.6 kilometers (6.6 miles) southeast, at coordinates 44–13–30 NL; 120–46–30 WL, to avoid a short-spacing to Station KUPL-FM, Channel 254C1, Portland, OR.

DATES: Comments must be filed on or before December 22, 1997, and reply comments on or before January 6, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Michael L. Mattson, 15740 May Road, Dallas, OR 97338 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–226, adopted October 22, 1997, and released October 31, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–30283 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–228; RM–9163]

Radio Broadcasting Services; Pima, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of R.A. Montierth Enterprises, L.L.C., seeking the allotment of Channel 296A to Pima, Arizona, as that community's first local aural transmission service. Coordinates used for this proposal are 32–53–36 and 109–49–42. Pima, Arizona, is located within 320 kilometers (199 miles) of the Mexico border, and therefore, the Commission must obtain the concurrence of the Mexican government in this proposal.

DATES: Comments must be filed on or before December 29, 1997, and reply comments on or before January 13, 1998.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Gregory L. Masters, Esq., Fisher, Wayland, Cooper, Leader & Zaragoza, L.L.P., 2001 Pennsylvania Avenue, NW., Suite 400, Washington, DC 20006.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–228, adopted October 29, 1997, and released November 7, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–30288 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–230, RM–9185]

Radio Broadcasting Services; New Albany, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by George G. Callicut requesting the allotment of Channel 268A to New Albany, Mississippi, as the community's third FM service. Channel 268A can be allotted to New Albany in compliance with the Commission's minimum distance separation requirements with a site restriction 5.5 kilometers (3.4 miles) northwest in order to avoid a short-spacing conflict with the licensed operation of Station WFTA–FM, Channel 270C2, Fulton, Mississippi. The coordinates for Channel 268A at New Albany are 34–31–14 NL and 89–03–03 WL.

DATES: Comments must be filed on or before December 29, 1997, and reply comments on or before January 13, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: George G. Callicut, 505 West End Drive, New Albany, Mississippi 38652 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–230, adopted October 29, 1997, and released November 7, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–30289 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–229, RM–9100]

Radio Broadcasting Services; Warrenton, NC, La Crosse, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by MainQuad, Inc., seeking the reallotment of Channel 297C2 from Warrenton, NC, to La Crosse, VA, as the community's first local aural service, and the modification of Station WXNC's construction permit to specify La Crosse as its community of license. Channel 297C2 can be allotted to La Crosse in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.9 kilometers (9.9 miles) east, at coordinates 36–45–07 NL; 77–55–36 WL, to accommodate petitioner's desired transmitter site.

DATES: Comments must be filed on or before December 29, 1997, and reply comments on or before January 13, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John M. Pelkey, Haley Bader & Potts P.L.C., Suite 900, 4350 North Fairfax Drive, Arlington, VA 22203–1633 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–229, adopted October 29, 1997, and released November 7, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–30287 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 62, No. 223

Wednesday, November 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

Office of the Secretary

Members of Performance Review Boards

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members of the Performance Review Boards (PRBs) for the U.S. Department of Agriculture (USDA). The USDA PRBs provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Secretary of Agriculture, regarding final performance ratings, performance awards, pay adjustments, recertification and Presidential Rank Awards for SES members.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Office of Human Resources Management, Executive Resources and Services Division, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–6047.

SUPPLEMENTARY INFORMATION: The publication of PRB membership is required by Section 4314(c)(4) of Title 5, U.S.C. The following membership list represents a standing register, from which specific PRBs will be constituted.

Ackerman, Kenneth D.
Acord, Bobby R.
Ahl, Alwynelle S.
Aldaya, George W.
Allen, Richard Dean
Amontree, Thomas S.
Anand, Rajen S.
Anderson, Margot H.
Andre, Pamela Q.
Andreuccetti, Eugene E.
Army, Thomas J.
Arnold, Richard W.
Arnoldi, Joan M.
Arthur, John B.
Ashworth, Warren R.
Atienza, Mary E.
Baker, James Robert
Bange, Gerald A.
Barrett Jr., Fred S.
Bartuska, Ann M.
Bateman, Victoria L.
Bay, Donald M.
Beauchamp, Craig L.
Beck, Richard H.
Bensey Jr., Roger L.
Berg, Joel S.
Betschart, Antoinette A.
Billy, Thomas J.
Blackburn, Wilbert H.
Bosecker, Raymond Ronald
Bosworth, Dale N.
Bottum, John S.
Braley, George A.
Breeze, Roger
Bryant, Arthur Ray
Buisch, William W.
Buntain, Bonnie J.
Burke, Brian E.
Burns, Denver P.
Burse Sr., Luther
Burt, John P.
Campbell, Arthur C.
Carey, Ann E.
Carey, Priscilla B.
Carpenter, Barry L.
Cartwright Jr., Charles W.
Chambliss, Mary T.
Cherry, John P.
Cielo, Angel B.
Clark, Lawrence E.
Clayton, Kenneth C.
Cohen, Kenneth E.
Collins, Keith J.
Comanor, Joan M.
Conrad, Virgil L.
Conway, Roger K.
Conway, Thomas V.
Cooksie, Carolyn B.
Cooper, George E.
Coulter, Kyle Jane
David, Irwin T.
Dewhurts, Stephen B.
Dittrich, Suzette M.
Dombeck, Michael P.
Dooms, Elnora C.
Douglas Jr., Frederick C.
Drazek, Paul A.
Duncan, Charles N.
Duncan III, John P.
Dunkle, Richard L.
Ebbitt, James R.
Elder, Alfred S.
Elias, Thomas S.
Ellis, Joanne H.
Estill, Elizabeth
Evans, Gary R.
Evans, Reba P.
Fishman, Michael E.
Fleischman, Joyce N.
Fowler, Jerry L.
Franco, Robert
Franks Jr., William Jesse
Frazier, Gregory
Frost, Alberta C.
Gadt, Larry O.
Galvin, Timothy J.
Gardner Jr., William Earl
Geasler, Mitchell Ray
Gelburd, Diane E.
Gillam, Bertha C.
Gippert, Michael J.
Gipson, Chester A.
Glavin, Margaret Agnes
Golden, John
Golodner, Adam M.
Graybeal, Nancy
Greene, Frank C.
Greenshields, Bruce L.
Grundeman, Arnold James
Gugulis, Katherine C.
Guldin, Richard W.
Hadlock, Earl C.
Hagy III, William F.
Hall, David C.
Hall, John W.
Hamilton, Thomas E.
Hardy Jr., Leonard
Harrington Jr., Rube
Harris, Sharron L.
Hatamiya, Lon S.
Hatcher, Charles F.
Havlik, William J.
Hayes, Paula F.
Herbert, Thomas R.
Hefferan, Colien J.
Hellickson Key, Sandra
Henneberry, Thomas J.
Harnandez, Humberto
Hessel, David L.
Hewings, Adrianna D.
Hicks, Vicki J.
Hill, Ronald W.
Hobbie, Mary Kyle
Hobbs, Alma C.
Hobbs, Ira L.
Holbrook, David M.
Hollingsworth, Jill M.
Holman, Pred Dwight
Horn, Floyd P.
Horner, Withers G.
House, Carol C.
Hudnall Jr., William J.
Jackson, Ruthie F.
Jackson, Yvette S.
Jacobs, Robert T.
Jakub, Lawrence M.
Janik, Philip J.
Johnsen, Peter B.
Johnson, Allan S.
Johnson, Judith K.
Johnson, Paul Wesley
Johnson, Phyllis E.
Jordan, John P.
Joslin, Robert C.
Jung, Christine M.
Kaiser Jr, Harold F.
Kaplan, Dennis L.
Keeffe, Mary Ann
Keener, Mary Lou
Keeney, Robert C.
Keith, Roderick
Kelly, James Michael
Kelly, Keith
Kelly, Michael W.

Kennedy, Eileen T.
King, Janet C.
King, R. Alan
King Jr., Edgar G.
Knipling, Edward B.
Koopman, Robert B.
Kronenberger Jr., Donald R.
Kuhn, Betsey A.
Laster, Danny B.
Laverty Jr., Robert L.
Lavin, Mary Jo
Lee, Warren M.
Leo, Joseph J.
Leonhardt, Barbara A.
Lewis, David N.
Lewis Jr., Robert
Lilja, Janice Grassmuck
Linden, Ralph A.
Little, James R.
Long, Richard D.
Lugo, Ariel E.
Luken, Bonnie L.
Macias, Cheryl L.
Maloney, Kathryn P.
Manning, Gloria
Margheim, Gary A.
Martin, Christopher J.
Martinez, Wilda H.
Matz, Deborah
Maupin, Gary T.
Mazie, Sara M.
McCutcheon, John W.
McDougle, Janice H.
Mckee, Richard M.
Medley, Terry L.
Mengeling, William L.
Mezainis, Valdis E.
Miller, Charles R.
Mills, Thomas J.
Mina, Mark T.
Murrell, Kenneth D.
Nervig, Robert M.
Newman, Richard Odell
Nordstrom, Gary R.
Novak, Jon E.
O Brien, Patrick Michael
Oberlander, Herbert
Offutt, Susan E.
Ohler, Barry A.
Olsen, Eric N.
Oneil, Barbara T.
Onstad, Charles A.
Ortego, John R.
Osgood, Barbara T.
Otto, Ralph A.
Parry Jr., Richard M.
Pearson, James E.
Peer, Wilbur T.
Perry, James P.
Peters, Robert
Potts, Janet S.
Powers, Judy M.
Prchal, Robert J.
Prucha, John C.
Purcell, Robert L.
Pytel, Christine
Radloff, David L.
Rains, Michael T.
Rawls, Charles R.
Read, Hershel R.
Reed, Anne F T.
Reed, Craig A.
Reed, Pearlie S.
Reginato, Robert J.
Reilly, Susan B.
Rexroad Jr., Caird E.
Reynolds, James R.
Rhoades, James D.
Riemenschneider, Robert A.
Risbrudt, Christopher D.
Robinson, Bobby H.
Rockey, Sarah J.
Roussopoulos, Peter J.
Salwasser, Harold James
Satterfield, Steven E.
Scarbrough, Frank E.
Schipper Jr., Arthur L.
Schroeder, James W.
Schwalbe, Charles P.
Sesco, Jerry A.
Sexton, Thomas J.
Seymour, Carol M.
Shackelford, Parks D.
Shadburn, Jan E.
Shands, Henry L.
Sheikh, Patricia R.
Shipman, David R.
Simmons, Robert M.
Skeen, David
Smith, Dallas R.
Smith, Horace
Smith, Katherine R.
Smith, Peter Francis
Smulkstys, Inga P.
Smythe, Richard V.
Sommers, William T.
Soper Jr., Richard S.
Spence, Joseph
Spory, Gene P.
Sprague, G. Lynn
St. John, Judith B.
Steele, W. Scott
Stencel III, John
Stewart, Ronald E.
Stockton Jr., Blaine D.
Stolfa, Patricia F.
Stommes, Eileen S.
Stuber, Charles W.
Tanner, Steven N.
Tharrington, Ronnie O.
Thomas, Irving W.
Thompson, Clyde
Thompson, Paul E.
Thornton, Samuel E.
Torgerson, Randall E.
Torres, Alfonso
Towns, Eleanor R.
Tuchmann, E. Thomas
Twining, Hollace L.
Vail, Kenneth H.
Valsing, D. Charles
Van Klaveren, Richard W.
Van Schilfgaarde, Jan
Vasquez Jr., Victor
Verble, Sedelta D.
Vogel, Frederic A.
Vogel, Richard J.
Vonk, Jeffrey Ronald
Wachs, Lawrence
Wachsmuth, Ina K.
Wagner, Lynnett M.
Walker, Larry A.
Walsh, Thomas M.
Walton, Thomas E.
Watkins, Dayton J.
Weber, Barbara C.
Weber, Bruce R.
Weber, Thomas A.
West, William L.
Whillock, Carl S.
White, Barbara A.
White Jr., T. Kelley
Whiteman, Glenn D.
Whiting, Robert W.
Whitmore, Charles
Williams, John W.
Williams, Robert W.
Williamson, Robert L.
Wilson, Edward M.
Witt, Timonthy Blaine
Wright, Lloyd E.
Wu, Jeremy S.
York, Phyllis B.
Young Jr., Robert W.
Zellers, Phillip
Zorn, Frances E.

Dated: November 12, 1997.

Richard E. Rominger

Deputy Secretary.

[FR Doc. 97–30318 Filed 11–18–97; 8:45 am]

BILLING CODE 3410–96–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 97–066N]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request an extension for and revision to a currently approved information collection package regarding exportation, transportation, and importation of meat and poultry products.

DATES: Comments on this notice must be received on or before January 20, 1998.

ADDITIONAL INFORMATION OR COMMENTS: Contact Lee Puricelli, Paperwork Specialist, (202) 720–0346.

SUPPLEMENTARY INFORMATION:

Title: Exportation, Transportation, and Importation of Meat and Poultry Products.

OMB Number: 0583–0094.

Expiration Date of Approval: December 31, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS

protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting an extension and revision to the information collection package addressing meat and poultry paperwork and recordkeeping requirements regarding exportation, transportation, and importation of meat and poultry products. FSIS requires that meat and poultry establishments exporting product to foreign countries complete an export certificate. Establishments must supply the type, amount, and destination of product being exported. The information required by on this form does not duplicate any information required by other Federal agencies. The form is necessary to certify to the importing countries that FSIS inspectors have inspected the product and have found it sound and wholesome. Additionally, FSIS uses the information from the form in its annual Report to Congress as required by sections 301(c)(4) and 20(e) of the FMIA and sections 27 and 5(c)(4) of the PPIA.

Meat and poultry products not marked with the mark of inspection and shipped from one official establishment to another for further processing must be transported under FSIS seal to prevent such unmarked product from entering into commerce. To track product shipped under seal, FSIS requires shipping establishments to complete a form that identifies the type, amount, and weight of the product.

A foreign country exporting meat or poultry products to the U.S. must establish eligibility for importation of product into the U.S. and annually certify that its inspection systems are ''at least equal to'' the U.S. inspection system. To maintain eligibility, a written report must be prepared monthly by a representative of the foreign inspection system for each establishment listed in the certification. Additionally, meat and poultry products intended for import into the U.S. must be accompanied by a health certificate, signed by an official of the foreign government, stating that the products have been produced by certified foreign establishments. Establishments or brokers wishing to import product into the United States must complete a form that specifies the type, amount, originating country and destination of the meat and poultry product. The amount of meat and poultry product imported into the United States is included in FSIS's annual Report to Congress. Additionally, FSIS has established procedures allowing establishments importing product to stamp such product with the inspection legend prior to FSIS inspection, if they receive FSIS prior approval.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .0773501 hours per response.

Respondents: Meat and poultry establishments.

Estimated Number of Respondents: 7,374.

Estimated Number of Responses per Respondent: 295.88866.

Estimated Total Annual Burden on Respondents: 168,769 hours.

Copies of this information collection assessment and comments can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, 300 12th Street SW, Room 109, Washington, DC 20250–3700, (202) 720–0346.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, 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 the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

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.

Dated: November 10, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–30319 Filed 11–18–97; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 97–065N]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request an extension for and revision to a currently approved information collection package regarding official marking devices, labeling, and packaging material.

DATES: Comments on this notice must be received on or before January 20, 1998.

ADDITIONAL INFORMATION OR COMMENTS: Contact Lee Puricelli, Paperwork Specialist, (202) 720–0346.

SUPPLEMENTARY INFORMATION:

Title: Official Marking Devices, Labeling, and Packaging Material.

OMB Number: 0583–0092.

Expiration Date of Approval: December 31, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting an extension and revision to the information collection package addressing meat and poultry paperwork and recordkeeping requirements regarding official marking devices, labeling, and packaging material. To control the manufacture of marking devices bearing official marks, FSIS requires that official meat and poultry establishments and manufacturers of such marking devices complete a form. The establishment completes the first part of the form requesting that certain brands or other devices be manufactured. The manufacturer of the brands then provides its business name and address, and serial numbers of brands or devices. Such certification is necessary to help prevent the manufacture and use of counterfeit marks of inspection. To ensure that meat and poultry products are accurately labeled, FSIS approves meat and poultry product labelings. To ensure that packaging material does not render meat and poultry products adulterated, FSIS requires a statement of assurance from packaging manufacturers when such packaging is intended for use in meat and poultry establishments. The statement is a guaranty that the packaging material conforms with Federal Food, Drug and Cosmetic Act (FFDCA) regulations for food contact materials.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .2596531 hours per response.

Respondents: Meat and poultry establishments.

Estimated Number of Respondents: 7,374.

Estimated Number of Responses per Respondent: 62.153919.

Estimated Total Annual Burden on Respondents: 119,005 hours.

Copies of this information collection assessment and comments can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, 300 12th Street SW, Room 109, Washington, DC 20250–3700, (202) 720–0346.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, 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 the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

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.

Dated: November 10, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–30320 Filed 11–18–97; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Prepare an Environmental Impact Statement for the Expansion of the Bill Williams Ski Area

AGENCY: Forest Service, United States Department of Agriculture.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the Expansion of the Bill Williams Mountain Ski Area.

SUMMARY: The United States Department of Agriculture Forest Service (USDA, FS), Region 3, Kaibab National Forest, announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to Sec. 102(2)(c) of the National Environmental Quality requestions for implementing NEPA. This Environmental Impact Statement will evaluate potential impacts from expanding the Bill Williams Mountain Ski area, Coconino County, Arizona. The USDA, FS invites the general public, local governments, Indian tribes, other Federal agencies, and states to submit written comments or suggestions concerning the scope of the issues to be addressed, alternatives to be analyzed, and the environmental impacts and cultural impacts to be addressed in the Draft Environmental Impact Statement (DEIS). The public is invited to participate in scoping activities including an open house in which comments and suggestions will be received. Oral and written comments will be considered equally in preparation of the DEIS.

DATES: All comments must be received or postmarked by December 22, 1997, to be considered in the preparation of the DEIS. To the extent practicable, the USDA, FS will consider comments received or postmarked after the deadline. An open house will be conducted at the Williams Holiday Inn (950 N. Grand Canyon Blvd., Williams, AZ) on December 4, 1997, between 4:30 and 8:00 P.M. The date, time, and specific location of the scoping meeting will be announced at least 15 days before the meeting in the local media.

FOR FURTHER INFORMATION CONTACT: Please direct written comments/suggestions on the scope of the DEIS or questions concerning the project to: Teri Cleeland at USDA, FS Williams/Chalendar Ranger District, 501 W. Route 66, Williams, AZ 86046, 520/635–2676 or Dave Brewer at Kaibab National Forest, 800 S. 6th St., Williams, AZ 86046, 520/635–8331.

SUPPLEMENTARY INFORMATION:

Purpose and Need: The proposed ski expansion area is located in the Kaibab National Forest approximately four miles south of Williams, Arizona on Bill Williams Mountain. A comparison of the existing and desired conditions for this management area outlined in the Kaibab National Forest Land and Resource Management Plan indicates a need to improve not only the existing ski facilities but also expand on the 16 acres of the skiable terrain to promote a quality alpine skiing experience. The current vertical drop, ski run length, and ski run configuration do not provide for a good cross-section for the various experience levels of skiers. Provision of higher elevation runs and snowmaking will increase the season of use through enhanced snow cover on runs.

The proposed expansion of the Bill Williams Ski Area will satisfy the following needs:

—improve the quality of recreation experience in the Williams area,
—diversify the local economic base for the City of Williams
—increase skier capacity to accommodate unmet skier demand in the region,
—provide better and more consistent skiing conditions by increasing reliability of skiable snow cover, particularly at the beginning of the season when skiing is frequently delayed,
—encourage efficient use of facilities by expanding use into the summer months,
—satisfy Forest Service management objective (see below).

The expansion of the Bill Williams Ski Area will meet the following Forest Service management objectives:

—It is Forest Service policy to provide, under special-use authorization, suitable facilities and services that supplement or complement those provided by the private sector on private lands on National Forest System land to meet public needs. In addition, it is Forest Service policy to facilitate the use, enjoyment, and appreciation of the National Forests in a natural resource setting (FSM 2340.2).
—Update and modify the previous approved Environmental Impact Statement which authorized a new ski area on the north slopes of Bill Williams Mountain (USDA-Kaibab National Forest 1986).
—To provide a diversity of recreation activities that emphasize the forest setting and rustic, natural resource based recreation opportunities (FSM 2343.02).

Decision to be Made: Based on public response to the DEIS, a decision will be made regarding expansion of the Bill Williams Ski Area. Possible decisions include the following: 1.) implement the proposed action as defined; 2.) take no action at all; or 3.) take action to some other degree, based on issues generated through public scoping.

Proposed Action: The USDA—Kaibab National Forest, proposes to authorize Alpine Recreation Company LLC., to incorporate the existing Bill Williams ski area and construct, operate, and maintain an expansion of current facilities. Under the proposed action, the skiable terrain would increase from 16.4 acres to 62.6 acres. The total number of skiers that could be

accommodated at one time would increase from 250 to 1,130.

Specific expansions proposed by Alpine Recreation include the following: additional ski runs (43 acres); a triple chair lift (approximately 5,600 feet in length); three new handle tows (ranging from 400 to 600 feet in length); a maintenance building (2,400 square feet); construction of a new Top Vista Lodge with composting restrooms (800 square feet); new parking facilities (75,000 square feet); construction of a new bases lodge (4,600 square feet) with additional outside deck seating (2,500 square feet); three new water impoundments (capacity of 24 acre-feet); infrastructure for snowmaking (2,000 subsurface distribution system for snowmaking on 7 acres); a new septic system; a summer trail which would generally follow runs 18, 18A, 12 and 7; a picnic area along the edge of run 12; implementation of a sky ride program during the summer recreation period; and expansion of the permit area from the current 37 acres to approximately 200 acres.

Preliminary Identification of Environmental and Cultural Issues: The USDA, FS has identified the following preliminary issues for analysis for alternative actions in the DEIS. Additional issues may be identified as a result of the scoping process. Issues include impacts of the action alternatives on:

—Water quality and quantity,
—Water rights,
—Soil erosion and disturbance,
—Threatened, endangered, and sensitive species and their habitat,
—Visual quality,
—Fire occurrence,
—Cultural resources,
—Traditional uses of the area by American Indians,
—Rights of American Indians for which the area has religious and cultural significance,
—Socioeconomic resources of local communities,
—Demand for additional skiing facilities in Northern Arizona.

Cooperating Agencies and Groups Involved in the Preparation of the DEIS: United States Department of Agriculture Forest Service, Region 3, Kaibab National Forest; Alpine Research Company, LLC., and SWCA, Inc., Environmental Consultants.

Dated: November 12, 1997.

Bruce J. Higgins,

Acting Forest Supervisor.

[FR Doc. 97–30326 Filed 11–18–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, USDA.

ACTION: Proposed collection: comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service (RHS) intention to request an extension for a currently approved information collection in support of compliance with applicable acts for planning and performing site and other development work.

DATES: Comments on this notice must be received by January 20, 1998 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Samuel J. Hodges III, Architect, Program Support Staff, RHS, U.S. Department of Agriculture, Stop 0761, 1400 Independence Ave., S.W., Washington, DC 20250–0761, Telephone (202) 720-9653.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1924 Subpart C, ''Planning and Performing Site Development Work.''

OMB Number: 0575–0164.

Expiration Date of Approval: January 31, 1998.

Type of Request: Extension of a currently approved information collection.

Abstract: The information collection under OMB Number 0575–0042 enables RHS to effectively administer the policies, methods and responsibilities in planning and performing site development work for the related construction programs.

Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, repair, replace or rehabilitate dwellings, farm buildings and/or related facilities to provide decent, safe and sanitary living conditions and adequate farm buildings and other structures in rural areas.

The Agency makes direct and guaranteed loans to applicants of up to 100 percent of the appraised value of the property, therefore, the site and its development are an integral part of the building construction and related facilities being financed. The information collection required by this regulation is necessary to assure orderly development of rural areas leading to economically stable communities that consider the impact of the environment and protection of the borrower and Government security interests.

Other information collection is required to conform to numerous Public Laws applying to all federal agencies, such as: Civil Rights Acts of 1964 and 1968, Historic Preservation Act, Environmental Policy Act; and to conform to Executive Orders governing use of federal funds. This information is cleared through the appropriate enforcing Agency or other executive Department.

The Agency provides forms and/or guidelines to assist in the collection and submission of information. The information is usually submitted via hand delivery or U.S. Postal Service to the appropriate Agency office.

The information is used by the Agency to determine whether a loan can be approved, to ensure that the Agency has adequate security for the loans financed, to provide for sound construction and site development work and to determine that the requirements of the applicable Acts have been met. The information is also used to monitor compliance with the terms and conditions of the Agency loans and to monitor the prudent use of federal funds.

If the information were not collected and submitted, the Agency would not have control over the type and quality of construction and site development work planned and performed with federal funds. The Agency would not be assured that the security provided for loans is adequate, nor would the Agency be certain that decent, safe and sanitary dwelling or other adequate structures were being provided to rural residents as required by the different Acts.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.138 hours per response.

Respondents: Individuals or households, business or other for-profit, non-profit institutions, and small businesses or organizations.

Estimated Number of Respondents: 30,000.

Estimated Number of Responses per Respondent: 1.5.

Estimated Total Annual Burden on Respondents: 6210 hours.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, at (202) 690–1766.

Comments

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the function of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information, including the validity of 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 the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0743, 1400 Independence Ave., S.W., Washington, DC 20250–0753. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: November 6, 1997.

Jan E. Shadburn,

Administrator, Rural Housing Service.

[FR Doc. 97–30372 Filed 11–18–97; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology.

Title: National Voluntary Laboratory Accreditation Program (NVLAP), NVLAP Information Collection System.

Agency Form Number: None.

OMB Approval Number: 0693–0003.

Type of Request: Extension of a currently approved collection.

Burden: 2,750 hours.

Number of Respondents: 1,000.

Avg. Hours Per Response: 3 hours annually (reporting and recordkeeping).

Needs and Uses: NVLAP provides accreditation to testing and calibration laboratories world wide. Accreditation means that a laboratory has been judged to be technically competent to perform calibration and other testing services. To be considered for NVLAP accreditation, a laboratory must make application. The information provided, as well as the on site review, is used to evaluate the competency of the laboratory. If the criteria are met, then NVLAP accreditation is granted.

Affected Public: Businesses or other for-profit organizations, not-for profit institutions, federal government, state, tribal, local governments.

Frequency: Annually, on occasion, recordkeeping.

Respondent's Obligation: Required to obtain or retain benefits

OMB Desk Officer: Virginia Huth, (202) 395–6929.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Virginia Huth, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: November 12, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–30342 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Survey of Ocean Freight Revenues and Expenses of United States, Carriers—BE–30, Survey of U.S. Airline Operators' Foreign Revenues and Expenses—BE–37.

Form Number(s): BE–30/BE–37.

OMB Approval Number: 0608–0011

Type of Request: Extension—regular submission.

Burden: 800/320.

Number of Respondents: 40/20.

Avg Hours Per Response: 5 hours/4 hours.

Needs and Uses: The Bureau of Economic Analysis is responsible for the computation and publication of the U.S. balance of payments accounts. The information collected in these surveys are an integral part of the ''transportation'' portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Bureau's monthly publication, the *Survey of Current Business,* are one of the major statistical products of BEA. The accounts provide a statistical summary of U.S. international transactions. They are used by government and private organizations for national and international policy formulation, and analytical studies. Without the information collected in these surveys, an integral component of the transportation account would be omitted. No other Government agency collects comprehensive quarterly data on U.S. ocean carriers' freight revenues and expenses or U.S. airline operators' foreign revenues and expenses.

Affected Public: U.S. ocean and air carriers.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 13, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–30343 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–EA–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation 1996 Panel Wave 7.

Form Number(s): SIPP/CAPI Automated Instrument; SIPP 16705(L) Director's Letter.

Agency Approval Number: 0607–0813.

Type of Request: Revision of a currently approved collection.

Burden: 117,800 hours.

Number of Respondents: 77,700.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Bureau of the Census conducts the Survey of Income and Program Participation (SIPP) to collect information from a sample of households concerning the distribution of income received directly as money or indirectly as in-kind benefits. SIPP data are used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare and transfer payment programs such as the Department of Health and Human Services, the Department of Housing and Urban Development, and the Department of Agriculture.

The SIPP is a longitudinal survey, in that households in the panel are interviewed 12 times at 4 month intervals or waves over the life of the panel, making the duration of the panel about 4 years. The next panel of households will be introduced in the year 2000.

The survey is molded around a central core of labor force and income questions, health insurance questions, and questions concerning government program participation that remain fixed throughout the life of a panel. The core questions are asked at Wave 1 and are updated during subsequent interviews. The core is supplemented with additional questions or topical modules designed to answer specific needs.

This request is for clearance of the topical modules to be asked during Wave 7 of the 1996 Panel. The core questions have already been cleared. Topical modules for waves 8 through 12 will be cleared later. The topical modules for Wave 7 are: (1) Annual Income & Retirement Accounts, (2) Taxes, (3) Retirement and Pension Plan Coverage; and (4) Home Health Care. Wave 7 interviews will be conducted from April through July 1998.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 14, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–30344 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–850]

Notice of Antidumping Duty Order: Collated Roofing Nails From the People's Republic of China

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

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Everett D. Kelly or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4194 or (202) 482–1766, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to 19 CFR 353, as codified on April 1, 1997.

Scope of Order

The product covered by this investigation is collated roofing nails (''CRN'') made of steel, having a length of 13⁄16 inch to 1 13⁄16 inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

CRN within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 7317.00.55.06. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, on September 24, 1997, the Department made its final determination that CRN from the PRC are being sold at less than fair value (62 FR 51410–419, October 1, 1997). On November 12, 1997, the International Trade Commission (''ITC'') notified the Department of its final determination, pursuant to section 735(b)(1)(A)(ii) of the Act, that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from the PRC and Taiwan. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act, that, but for the suspension of liquidation of entries of the subject merchandise, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative ''but for'' finding under section 735 (b)(4)(B) of the Act, the ''Special Rule'' provision of section 736(b)(2) applies. Therefore, only unliquidated entries of CRN from the PRC, entered or withdrawn from warehouse, for consumption *on or after* the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register** are liable for the assessment of antidumping duties. Accordingly, the Department will direct the Customs Service to terminate the suspension of liquidation for entries of CRN from the PRC entered, or withdrawn from warehouse, for consumption *before the date* on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

In accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of merchandise for all relevant entries of CRN from the PRC except for imports manufactured and exported by Shenzhen Top United Steel Co., Ltd. (''Top United'') or Qingdao Zongxun Nail Products Co., Ltd. (''Zongxun''). All bonds may be released and entries of Top United and Zongxun may be liquidated without regard to antidumping duties. For all other manufacturers/exporters, antidumping duties will be assessed on all

unliquidated entries of CRN from the PRC entered, or withdrawn from warehouse, for consumption on or after the date on which the ITC published its final affirmative determination notice in the **Federal Register**. On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

The *ad valorem* weighted-average dumping margin is as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
PRC-wide Rate	118.41

Allegations of ministerial errors were made with respect to the Department's final determination for CRN from the PRC. Upon review, the Department determined that these allegations were without merit. Therefore, no amendments to the final determination were necessary.

This notice constitutes the antidumping duty order with respect to CRN from the PRC. The Department is excluding from the application of the order products from the PRC that are manufactured *and* sold to the United States by Top United or Zongxun.

Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act.

Dated: November 14, 1997.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–30399 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–826]

Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan

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

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Everett D. Kelly or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4194 or (202) 482–1766, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 353, as codified on April 1, 1997.

Amended Final Determination

In accordance with section 735(a) of the Tariff Act of 1930, on September 24, 1997, the Department made its final determination that collated roofing nails (''CRN'') from Taiwan are being, or are likely to be, sold in the United States at less than fair value (62 FR 51427–51437 (October 1, 1997)). Subsequent to the final determination, on October 10 and 14, 1997, we received submissions, timely filed pursuant to 19 CFR 353.28(b), from Unicatch Industrial Co. Ltd. (''Unicatch''), Lei Chu Enterprises Co., Ltd (''Lei Chu''), and S&J Wire Products Company, Ltd. (''S&J''), alleging ministerial errors in the Department's final determination for these respondents. We also received submissions from Paslode Division Of Illinois Tool Works Inc. (''the petitioner'') alleging ministerial errors in the Department's final determination for S&J and Lei Chu.

We determine that ministerial errors were made in our final margin calculations for Lei Chu with respect to calculation of SG&A and profit, for Unicatch with respect to calculation of constructed export price, and for S&J with respect to exclusion of certain sales, calculation of normal value and exclusion of non-subject merchandise. For a detailed discussion of the above-cited ministerial errors and the Department's analysis, see Memorandum from Case Analysts to Louis Apple, dated October 22, 1997. In accordance with 19 CFR 353.28(c), we are amending the final determination of the antidumping duty investigation of CRN from Taiwan to correct these ministerial errors. The revised final weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Original margin percentage	Revised margin percentage
Unicatch Industrial Co. Ltd..	0.00	0.00
Lei Chu Enterprises Co., Ltd, S&J Wire Products Company, Ltd./.	0.07 (De Minimis) ...	0.00
New Lan Lung.	5.36	2.98
Romp Coil Nail Industries.	40.28	40.28
K. Ticho	40.28	40.28
All Others ..	5.36	2.98

Scope of Order

The product covered by this investigation is CRN made of steel, having a length of 13/16 inch to 1–13/16 inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank diameter of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

CRN within the scope of this investigation are classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 7317.00.55.06. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Act, the Department made its final determination that CRN from Taiwan are being sold at less than fair value. On November 12, 1997, the International Trade Commission (''ITC'') notified the Department of its final determination, pursuant to section 735(b)(1)(A)(ii) of the Act, that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from Taiwan. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act, that, but for the suspension of liquidation of entries of the subject merchandise, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative ''but for'' finding under section 735 (b)(4)(B) of the Act, the ''Special Rule'' provision of section 736(b)(2) applies. Therefore, only unliquidated entries of collated roofing nails from Taiwan entered, or

withdrawn from warehouse, for consumption on or after the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register** are liable for the assessment of antidumping duties. Accordingly, the Department will direct the Customs Service to terminate the suspension of liquidation for entries of collated roofing nails imported from Taiwan entered, or withdrawn from warehouse, for consumption before the date on which the ITC published its notice of final determination of threat of material injury in the **Federal Register**, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

In accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of merchandise for all relevant entries of CRN from Taiwan except for imports manufactured and exported by Unicatch or Lei Chu. All bonds may be released and entries of Unicatch and Lei Chu may be liquidated without regard to antidumping duties. For all other manufacturers/exporters antidumping duties will be assessed on all unliquidated entries of CRN from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date on which the ITC published its final affirmative determination notice in the **Federal Register**. On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

The *ad valorem* weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Revised weighted-average margin percentage
S&J Wire Products Company, Ltd./ New Lan Lung	2.98
Romp Coil Nail Industries	40.28
K. Ticho	40.28
All Others	2.98

This notice constitutes the antidumping duty order with respect to CRN from Taiwan, pursuant to section 736 (a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published pursuant to section 736 (a) of the Act (19 USC 1673e (a)) and 19 CFR 353.21.

Dated: November 17, 1997.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–30400 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration A–791–804

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa

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

ACTION: Notice of Final Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Rast, Nancy Decker, or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5811, (202) 482–0196, and (202) 482–3833, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are in reference to the regulations, codified at 19 CFR Part 353, as they existed on April 1, 1996.

Final Determination

We determine that certain cut-to-length carbon steel plate (CTL plate) from South Africa is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

Since the preliminary determination in this investigation (Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 31963 (June 11, 1997)), the following events have occurred:

In July and August 1997, we verified the respondents' questionnaire responses. On August 22, 1997 and September 3, 1997, the Department issued its reports on verification findings for Iscor Ltd. (Iscor). On August 25, 1997 and September 15, 1997, the Department issued its reports on verification findings for Highveld Steel and Vanadium Corporation Ltd. (Highveld). On September 22, 1997, respondents submitted new computer sales listings which included data corrections identified through verification. Petitioners and respondents submitted case briefs on September 15, 1997, and rebuttal briefs on September 22, 1997. A public hearing was not held.

Scope of Investigation

The products covered by this investigation are hot-rolled iron and non-alloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from the subject

merchandise within the scope of the petition is grade X–70 plate. Although the HTS 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 investigation (POI) is October 1, 1995, through September 30, 1996.

Fair Value Comparisons

To determine whether sales of the subject merchandise by respondents to the United States were made at less than fair value, we compared the Export Price (EP) or Constructed Export Price (CEP), where appropriate, to the Normal Value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared the weighted average EPs or CEPs to weighted-average NVs during the POI. In determining averaging groups for comparison purposes, we considered the appropriateness of such factors as physical characteristics and level of trade.

(i) Physical Characteristics

In accordance with section 771(16) of the Act, we considered all products covered by the description in the ''Scope of Investigation'' section of this notice, produced in South Africa by the respondents and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in the Department's antidumping questionnaire. In making the product comparisons, we relied on the following criteria (listed in order of preference): paint, quality, specification and/or grade, heat treatments, standard thickness, standard width, whether or not checkered, and descaling. It is our practice where sales were made in the home market on a different weight basis from the U.S. market (theoretical versus actual weight) to convert all quantities to the same weight basis, using the conversion factors supplied by the respondents, before making our fair-value comparisons. (See Final Determination of Sales at Less Than Fair Value: Cut-to-Length Carbon Steel Plate from Finland, 58 FR 37122 (July 9, 1993) and Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Taiwan, 57 FR 53705 (November 12, 1992).) For Iscor, we found that it did not properly report a weight conversion factor. In order that all price comparisons be made on the same weight basis, we converted Iscor's reported home market and U.S. prices, quantities and costs, as appropriate, based on information on the record (see Comment 10 of the ''Interested Party Comments'' section of this notice).

(ii) Level of Trade

To the extent practicable, we determine normal value for sales at the same level of trade as the U.S. sales (either EP or CEP). When there are no sales at the same level of trade we compare U.S. sales to home market (or, if appropriate third country) sales at a different level of trade. For both EP and CEP, the relevant transaction for level of trade is the sale from the exporter to the importer. While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the construction of the EP results in a price that would have been charged if the importer had not been affiliated. We calculate the CEP by removing from the first resale to an independent U.S. customer expenses and the profit associated with those expenses under section 772(d) of the Act. These expenses represent activities undertaken by, or on behalf of, the affiliated importer. Because the expenses deducted under section 772(d) represent selling activities in the United States, the deduction of these expenses normally yields a different level of trade for the CEP than for the later resale which is used for the starting price. Movement charges, and duties and taxes deducted under section 772(c) of the Act do not represent activities of the affiliated importer and we do not remove them to obtain the CEP level of trade. The NV level of trade is that of the starting price of sales in the home market. When NV is based on constructed value, the level of trade is that of the sales from which we derive SG&A and profit.

To determine whether home market sales are at a different level of trade than U.S. sales, we examine whether the home market sales are at different stages in the marketing process than the U.S. sales. The marketing process in both markets begins with goods being sold by the producer and extends to the sale to the final user. The final user could be an individual consumer or an industrial user, but the marketing process for all goods starts with a producer and ends with a user. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In the United States, the respondent's sales are generally to an importer, whether independent or affiliated. We review and compare the distribution systems in the home market and U.S. export markets, including selling functions, class of customer, and the extent and level of selling expenses for each claimed level of trade. Customer categories such as distributor, original equipment manufacturer (OEM), or wholesaler are useful as they are commonly used by respondents to describe levels of trade, but, without substantiation, they are insufficient to establish that a claimed level of trade is valid. An analysis of the chain of distribution and of selling functions substantiates or invalidates claimed customer classifications based on levels of trade. If the claimed levels are different, the selling functions performed in selling to those levels should also be different. Conversely, if levels of trade are nominally the same, the selling functions performed should also be the same. Different levels of trade necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the level of trade. Different levels of trade are characterized by purchasers at different places in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

When we compare U.S. sales to home market sales at a different level of trade, we make a level-of-trade adjustment if the difference in level of trade affects price comparability. We determine any effect on price comparability by examining sales at different levels of trade in a single market, the home market. Any price effect must be manifested in a pattern of consistent price differences between home market sales used for comparison and sales at the equivalent level of trade of the export transaction. To quantify the price differences, we calculate the difference in the average of the net prices of the same models sold at different levels of trade. We use net prices because any difference will be due to differences in level of trade rather than other factors. We use the average difference in net prices to adjust the NV when it is based on a level of trade different from that of the export sale. If there is a pattern of no price differences, then the difference in level of trade does not have a price effect, and no adjustment is necessary.

In terms of granting a CEP offset, the statute also provides for an adjustment to NV if NV is established at a level of trade that is different from that of the

CEP, provided the NV level is more remote from the factory and we are unable to determine whether the difference in levels of trade affects the price comparability between the CEP and NV. This latter situation can occur where there is no home market level of trade equivalent to the U.S. sales level or where there is an equivalent home market level, but the data are insufficient to support a conclusion on price effect. The CEP offset is the lower of: (1) the indirect selling expenses on the home market sale; or (2) the indirect selling expenses deducted from the starting price in calculating CEP. The CEP offset is not automatic each time export price is constructed. It is only applicable when the level of trade of the home market sales used for NV are more advanced than the level of trade of the CEP and there is not an appropriate basis for determining whether there is an affect on price comparability.

Iscor did not claim a difference in level of trade. Consistent with our findings in the preliminary determination, for this final determination we have treated all of Iscor's home market and U.S. sales as being at a single level of trade and we have made no level of trade adjustment when matching its U.S. sales to home market sales.

Highveld claimed for the preliminary determination of this investigation, that its sales in the home market were made at two different levels of trade, and that all of its U.S. sales (both EP and CEP) were made at one level of trade. Based on our analysis of selling functions performed by Highveld, we found that a single level of trade existed in each market.

For this final determination Highveld argued that its sales in the home market were at a different, more remote, level of trade that its sales to the United States. Highveld has asserted that its sales in the home market were at a different stage in the marketing process than its CEP sales in the United States because they were to a different class of customer, and that the selling functions performed by Highveld were both qualitatively and quantitatively different between its home market and U.S. sales. Accordingly, because its home market sales are at a different, more remote, LOT than its sales to the United States, and because the Department cannot quantify whether the different LOTs affect price comparability, Highveld claims it should be granted a CEP offset.

Petitioners dispute Highveld's arguments that sales in the home market are more remote than its U.S. sales and that steel service centers and distributors are at different stages in the marketing process. Petitioners also argue that many of the selling functions described by Highveld are intangible, and because there is neither a quantitative or qualitative difference in selling functions performed in the two markets, Highveld should not be granted a CEP offset.

In determining whether separate levels of trade actually existed between the U.S. and home markets, we examined Highveld's marketing stages. In reviewing the chains of distribution and customer categories reported in the home market and in the United States, we are unable to make clear distinctions between different stages of the marketing process claimed by Highveld. Based on our review of the selling functions in the U.S. and home markets, the distinctions are not sufficient to constitute a difference in level of trade between sales in the two markets. As a result, we have not granted Highveld a CEP offset. See Comment 23 for a more complete discussion of this issue.

Export Price

We calculated the price of U.S. sales based on EP, in accordance with section 772(a) of the Act, when the subject merchandise was sold to unaffiliated purchasers in the United States prior to the date of importation. In certain instances, however, we determined that CEP as defined in section 772(b) of the Act was a more appropriate basis for the price of the U.S. sales. These instances involved sales made by Highveld to its U.S. affiliate, Newco Steel Trading (NST or Newco), which negotiates prices and quantities with its U.S. customers, and sells the subject merchandise to the U.S. customers. Newco operates as Highveld's exclusive distributor for sales of the subject merchandise in the United States, and as such, undertakes selling activities exceeding those of processing sales-related documentation. Specifically, Newco negotiates prices for particular products with its customers on a case-by-case basis, pays Highveld for the product order based on a price agreement, and takes title to the merchandise which is physically transferred to U.S. customers by common carriers.

For both respondents, we calculated EP sales based on packed prices to unaffiliated customers in the United States. Where appropriate, and pursuant to sections 772 (a) and (c) of the Act, we made deductions from the starting price for foreign inland freight, international freight, foreign brokerage and handling, marine insurance, early payment discounts, pre-sale warehousing expenses, and U.S. Customs duties.

We calculated CEP based on packed prices to unaffiliated customers in the United States. Where appropriate, and pursuant to sections 772(b) and (c) of the Act, we made deductions for the starting price for the foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. Customs duties, survey expenses, stevedoring and wharfage, commissions, inventory carrying expenses, credit expenses, and indirect selling expenses. We also made an adjustment for the amount of profit allocated to these expenses, in accordance with section 772(d)(3) of the Act.

We corrected the respondents' data for certain errors and omissions found at verification and submitted to the Department. Specifically, for Iscor we corrected for certain errors and omissions found at verification as submitted by the company on September 22, 1997, and we made adjustments to U.S. and home market credit expenses, certain rebates, ocean freight, and Iscor's weight conversion factors based on findings from verification. See ''Interested Party Comments'' section of this notice. For Highveld, we corrected for certain errors and omissions found at verification as submitted by the company on September 22, 1997, and we made adjustments to U.S. and home market credit expenses, marine insurance, brokerage and handling charges, certain rebates, survey expenses, stevedoring and wharfage, inland freight, packing, U.S. warranty expenses, and certain direct selling expenses and unreported U.S. sales. See ''Interested Party Comments'' section of this notice.

Normal Value

Based on a comparison of the aggregate quantity of home-market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade. Where appropriate, we deducted rebates, discounts, credit, inland freight, pre-sale warehousing, and packing. We also made adjustments, where appropriate, for home-market indirect selling expenses to offset U.S. commissions in CEP comparisons. In comparisons to EP and CEP sales, we increased NV by U.S. packing costs in accordance with

section 773(a)(6)(A) of the Act. We also made adjustments to NV for physical differences in merchandise (''difmer'').

Cost of Production Analysis

As discussed in the preliminary determination, the Department conducted an investigation to determine whether Iscor and Highveld made home market sales during the POI at prices below their cost of production (COP) within the meaning of section 773(b) of the Act.

A. Calculation of COP

We compared sales of the foreign like product in the home market with the model-specific cost of production figures for the POI. In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in condition ready for shipment. Based on our verification of the cost responses for Highveld, we adjusted the company's COP to reflect dimensional cost differences, correct for overstated fabrication costs, include the effect of yield loss on fixed overhead, calculate interest expense using the company's consolidated financial results and correct for errors in the SG&A rate calculation. For Iscor we adjusted the COP to reflect the reclassification variance on a more product-specific basis, include certain year-end adjustments and minor corrections, account for the difference between reported costs and those recorded in its normal accounting records, include headquarters cost in SG&A, and allocate G&A over cost of sales.

B. Test of Home Market Prices

In order to test Iscor's and Highveld's home market prices, we compared their weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and direct selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were at prices less than the COP, we disregarded the below-cost sales where such sales were found to be made at prices which would not permit the recovery of all costs within a reasonable period of time (in accordance with section 773(b)(2)(D) of the Act). Where all sales of a specific product were at prices below the COP, in accordance with section 773(b)(1) of the Act, we disregarded all sales of that product, and calculated NV based on constructed value (CV) in accordance with section 773(e) of the Act.

D. Calculation of Constructed Value (CV)

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A, interest expenses, and profit. In accordance with sections 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the home market. For selling expenses, we used the weighted-average home market selling expenses. Based on our verification of the cost responses submitted by Iscor, we adjusted the reported CV for the same items noted in the COP section above. Based on our verification of the cost responses submitted by Highveld, we adjusted the reported CV for the same items noted in the COP section above.

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 the 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.

In this case, the Department has applied partial facts available for various expenses and adjustments. (See ''Interested Party Comments'' section of this notice, comments 9, 10, 22, 31, 33, and 37.) We have also applied facts available to account for unreported sales. (See ''Interested Party Comments'' section of this notice, comment 28.)

Currency Conversion

For purposes of the preliminary determination, we made currency conversions using the official daily exchange rate in effect on the date of the U.S. sale. These exchange rates were derived from actual daily exchange rates certified by the Federal Reserve Bank of New York. (See Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996).) Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. (See Change in Policy Regarding Currency Conversions, 61 FR 9434, 9435 (March 8, 1996).) The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar and was not applicable in this case.

In this investigation, there were certain days of the POI for which we substituted the benchmark for the daily rate because the daily rate involved a fluctuation. Consistent with our findings in the preliminary determination, for the final determination we saw no reason in this case to deviate from established practice, since South Africa is not a high-inflation economy, and the decline in the rand was not so precipitous and

large as to reasonably preclude the occurrence of a fluctuation. (See Comment 14 of the ''Interested Party Comments'' section of this notice.)

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Iscor and Highveld for use in our final determination. We used standard verification procedures, including examination of relevant accounting and sales/production records and original source documents provided by respondents.

Interest Party Comments

Comment 1

Petitioners state that the Department should correct for the errors Iscor reported on the first day of verification. Iscor reported that the submission contained an error in the calculation of the tonnage allocation factor that it used to calculate the variable and fixed cost adjustments and the company's total variance. According to the petitioners, these corrections are necessary because Iscor's errors effect the differences in merchandise adjustments and the 20% test for product matching. In addition, petitioners state that Iscor omitted year-end cost adjustments from its reported costs. According to the petitioners, these year-end adjustments are costs that relate to the whole period. Thus, the Department should also correct for this omission for the final determination.

Iscor concurs with the petitioners in that the Department should adjust the company's submitted COP and CV figures for this error and omission. Moreover, Iscor states that it gave the Department the appropriate information to adjust its submitted costs for the final determination.

DOC Position

We agree with both Iscor and petitioners. The Department's normal practice is to capture production costs for the specific product sold during the period of investigation. Therefore, we have adjusted Iscor's reported costs to account for the omission of the company's year-end adjustments from costs and to correct the reported values for the minor errors pointed out by Iscor on the first day of verification.

Comment 2

Petitioners assert that Iscor's reported costs are based on a distortive methodology and that we should reject its reported COP and CV data. Petitioners claim that the submitted costs are based on estimates and not actual costs. Specifically, petitioners claim that Iscor assigns labor costs and hours on a budgeted basis and that production costs are based on approximate production quantities. According to petitioners, Iscor's product groupings are being aggregated in contravention of the statue. In addition, petitioners argue that Iscor grouped costs for various products with different physical characteristics into a single control number.

Iscor states that it acted to the best of its ability in responding to the Department's questionnaires and has reasonably determined the production cost for each control number based on the company's existing data. Contrary to the petitioners' assertion, Iscor claims that it based its submitted costs on actual production quantities. As for the petitioners' specific concerns on product groupings, Iscor contends that this issue only arose in one control number sampled by the Department during verification. Therefore, Iscor argues that this does not make its home market sales data unusable nor does it warrant a determination of facts available as suggested by the petitioners. Iscor then elaborates that the reason it grouped internal product codes with variations in costs was that this control number consists of physically similar reclassified product codes (*i.e.*, reserve stock, flange material, and scrap) and prime product codes. Iscor further points out that a variation in costs exists between these internal product codes because it values reclassified product codes in a different manner than prime product codes.

DOC Position

We disagree with the petitioners' claim that we cannot rely on Iscor's submitted costs. Although the reported COP and CV amounts were calculated based on estimated labor costs and hours, Iscor adjusted all estimated or standard amounts to actual costs by calculating and applying production variances. (See cost verification exhibit 14). In addition, we disagree with petitioners' claim that we cannot rely on Iscor's submitted costs because they are based on approximate production mix tonnages. Although the reported production mix tonnages for each CONNUM were based on estimates, we believe that Iscor's method of estimating these tonnages resulted in a reasonable measure of the actual production tonnages by CONNUM. In the ordinary course of business Iscor does not retain production information on a model specific basis as defined by a CONNUM. Iscor does, however, maintain information on its sales mix which, because the company produces largely to order, resembles its production mix. Thus, Iscor used its sales dispatches to identify the quantity sold of each model. Iscor then used this information to determine the POI sales mix which was used as a surrogate for its production mix. Iscor adjusted this surrogate production mix tonnage to equal its actual total production tonnage. To show that this methodology was reasonable, Iscor provided a POI inventory movement report for the merchandise under investigation. (See verification exhibit 21.) According to this movement report, Iscor's production tonnages and sales tonnages were essentially the same amounts during the POI.

As Iscor has pointed out, the product codes it grouped together for the one commercial plate specification control number sampled by the Department during verification consisted of prime products and reclassified prime products (*i.e.*, reserve stock, flange material, and scrap) that had similar physical characteristics. To calculate a weighted-average cost for this control number, Iscor assigned manufacturing costs to the reclassified products based on the product code under which it sold the product rather than the actual costs based on what it intended to produce. (See cost verification exhibit 13.) While we do not disapprove of Iscor grouping prime products of similar physical characteristics within the same control number, we do consider the methodology used by Iscor to account for the cost of reclassified products inappropriate. Rather, in this instance, we consider it appropriate to use the actual cost incurred to manufacture the product rather than the cost assigned to the product by Iscor based on the product's classification for sale. We note that despite the fact that Iscor captured the difference between the cost of producing the intended merchandise and that which it ultimately sold through its reclassification variance, Iscor's reclassification variance approach spreads product-specific costs from models with commercial plate specifications to other product groupings.

For the final determination, we have adjusted the submitted cost of manufacturing for control numbers with commercial plate specifications by disallowing the assigning of lower costs to reclassified products. This adjustment is limited to models with commercial plate specifications because testing of Iscor's other product groupings at verification did not indicate the same problem. To avoid double counting costs, we have reduced the reclassification and reserve stock variances by the aggregate amount in

which we increased reported costs for models with commercial plate specifications.

As for our position concerning Iscor's methodology of grouping product codes with different physical characteristics, see comment 7 for further details.

Comment 3

Iscor maintains that the Department should not adjust its reported costs for the slight deviation reported on the reconciliation worksheet that it submitted as part of its cost verification exhibit 8. Iscor claims that this deviation only shows that its reported costs based on simulated production mixes are reasonable. Iscor suggests that the Department should expect some difference because its reported production mixes are based on what it sold during the POI and not what it produced. According to Iscor, using sales quantities was necessary because the company does not maintain model-specific production information. As for the cause of the deviation, Iscor provides the following explanations. Iscor first points out that the specific product mixes it manufactured during the POI was not necessarily the same as that sold during the POI. According to Iscor, this difference will statistically equal out over time because it only produces against orders. Iscor's second explanation is that its internal product codes consist of various similar products that have a similar cost make-up. However, these product codes have different physical characteristics and dimensions which made it necessary for the company to use them more than once when compiling the reported CONNUMs. The final reason stated by Iscor is that it can attribute the difference to the fact that it has historically used a standard cost system and not an actual costing system. Thus, Iscor had to adjust its standard costs to calculate the reported costs.

Petitioners contend that the Department must adjust Iscor's reported costs to account for the discrepancy between reported costs and costs recorded in the financial accounting system. According to petitioners, Iscor's explanation for the discrepancy does not mitigate the difference. If there is indeed a different product mix between the financial and cost accounting data that results in a difference in costs that have been calculated, then it is evidence that Iscor's reported costs are unreliable. Petitioners point out that one would not expect a difference between Iscor's reported and recorded costs because it actually derived the reported section D costs from the cost of sales recorded in the financial accounting system. Moreover, the petitioners state that Iscor provided its costs on this basis specifically because it assumed that it produces products in the same ratio as sold over a representative period. If the difference in the reported costs and financial system costs disproves this assumption, then the Department should reject Iscor's costs. Otherwise, the Department should increase Iscor's reported costs by the verification finding.

DOC Position

We agree with petitioners that we should increase Iscor's reported production costs to account for the difference between the reported costs and those recorded in its accounting system. As part of verification, Iscor prepared a reconciliation worksheet that shows its reported costs are less than the costs recorded in its accounting records. Although Iscor speculated as to the cause of the reconciling difference, the company could neither document nor quantify the specific reasons why its reported costs differed from those recorded normally in its records. With respect to Iscor's explanations for the difference, the fact that the company had to use relative sales quantities to determine product specific production quantities, or that it had to include sales of different models within a product code in different CONNUMs does not justify it not capturing all costs as recorded in its financial accounting system in accordance with its home country GAAP. In addition, Iscor having to adjust its standard costs to actual for the submission should cause the reported costs to agree with the actual costs recorded in its accounting system, not cause a reconciling item. Absent support for each of the reconciling assumptions noted by Iscor, we consider it appropriate to adjust the company's reported costs to include all costs as captured by its normal accounting system.

Comment 4

Petitioners argue that the Department must adjust Iscor's reported G&A expense for methodological errors. The petitioners cite the Department's cost verification report which states that Iscor omitted headquarters' costs from G&A and allocated G&A against fixed costs rather than cost of sales. Thus, the petitioners contend that the Department should correct these figures for the final determination.

Iscor claims that it is appropriate for it to allocate general expenses as a percentage of the fixed costs incurred to manufacture each specific product code. Iscor argues that it uses this methodology in the normal course of business and that the methodology appropriately applies the G&A percentage to each product code's reported fixed cost amount. Moreover, Iscor claims that the effect of expressing the percentage in terms of fixed cost instead of total cost has little effect on the reported costs because it is basically the same amount.

DOC Position

We agree with the petitioners that Iscor should allocate its G&A expense based on cost of sales rather than fixed costs. As set forth in Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan, Final Determination of Sales at Less Than Fair Value, 61 FR 38139, 38150 (July 23, 1996), our normal methodology for allocating G&A expenses to merchandise is based on cost of sales. Our methodology recognizes the fact that the G&A expense category consists of a wide range of different types of costs which are so unrelated or indirectly related to the immediate production process that any allocation based on a single factor (*e.g.*, head counts, fixed costs) is purely speculative. The Department's normal method for allocating G&A costs based on cost of sales takes into account all production factors (*i.e.*, materials, labor, and overhead) rather than a single arbitrarily chosen factor. Absent evidence that our normal G&A allocation method unreasonably states G&A costs, we allocated such costs for the final determination based on cost of sales.

In addition to allocating Iscor's G&A expenses based on the company's cost of sales, we increased Iscor's reported G&A expenses to account for headquarters costs incurred during the first half of the POI. Iscor indicated that this expense is a cost of production and that it should have included it in COP and CV. (See Iscor's cost verification report, at page 2.) Furthermore, Iscor included similar costs incurred during the second half of the POI in the submitted COP and CV.

Comment 5

Petitioners argue that ABS Grade A shipbuilding plate should not be matched to ASTM A36 plate because the majority of the shipbuilding plate was dual-certified to the A36 specification and is sold as structural plate. According to petitioners, the Department's plate specification hierarchy dictates that the more appropriate match is to the most stringent standard to which the product

is produced: the ABS grade. This grade, they allege, exhibits the closest physical characteristics.

Iscor argues that ABS Grade A shipbuilding plate is sold as structural steel and is intended to be used primarily as ASTM A36 material. Iscor claims that the Department verified Iscor's plate specification model match hierarchy.

Petitioners counter that the fact that shipbuilding plate may be used as structural plate or sold to structural plate customers is irrelevant to the Department's plate specification model match hierarchy, which focuses on physical characteristics. In petitioners' view, the fact that this steel is dual-certified to both the ABS and ASTM A36 specification does not mean that A36 is the best match. Petitioners state that because this material meets the more stringent ABS shipbuilding standard, it should be matched to a product with similar characteristics.

Iscor responds that the dual certified ABS and A36 plate was sold in the United States as a structural steel and not as shipbuilding plate. Iscor acknowledges that its customers requested the dual certification to enable them to sell this material as shipbuilding plate, but argues that the vast majority of this material was sold as A36 material. Iscor claims that matching this steel to Lloyds shipbuilding plate Grade A would ignore the first intent for the material sold in the United States, which is structural steel. Iscor likens matching the two shipbuilding steels under these circumstances to matching a pressure vessel steel to a structural steel. Iscor notes that it gives dual certified ABS and A36 material the same internal quality code as it gives to single certified A36 material, while single certified ABS plate has a different quality code. Iscor cites this as evidence that the company treats the dual certified material as equivalent to A36 and that this is the best home market match for dual certified material sold in the United States.

DOC Position

We agree with petitioners. As petitioners correctly note, the fact that shipbuilding plate may be used as structural plate or sold to structural plate customers is irrelevant to the Department's plate specification model match hierarchy, which focuses on physical characteristics of the most stringent specification to which a product is made. In this case the ABS Grade A specification is the more stringent specification and this is the specification that is controlling in selecting a home market product. As Iscor acknowledges, the reason the product sold in the United States is dual certified is that its customers requested the dual certification to enable them to sell this material as shipbuilding plate. Regardless of how this product is ultimately used by the customer, this remains the most stringent specification to which this product is made. For this final determination we are continuing to consider the best match specification for dual certified ABS/A36 plate sold in the United States to be Lloyds Grade A plate sold in the home market.

Comment 6

Petitioners allege that Iscor seemed to have difficulty reporting the correct chemical requirements of the certain plate specifications examined at verification, which may distort the appropriate product matching of grades. They state that the Department should ensure that the correct chemical requirements are reviewed when matching grades and creating product control numbers. Petitioners note that a large and divergent number of products were included in one product control number. Petitioners state that Iscor was unable to determine the actual characteristics of much of the plate in this product control number, and that therefore the Department should reject Iscor's product control numbers and base the final determination on facts available.

Iscor maintains that it correctly constructed each product control number using information that pertained to the order on which the invoice was issued. Iscor notes that petitioners' claims relate to information submitted in response to Part D of the Department's antidumping duty questionnaire, the cost portion of this review. Iscor references its response to Comment 2 above and alleges that because the effect and cost deviations were declared and explained in the costing system, the deductions made from the variances in cost are accounted for.

DOC Position

We agree with both respondent and petitioners, in part. During our review of the product characteristics for numerous sample sales, we did not identify any discrepancies in reported product characteristics between mill certificates and product specifications. That is, each product we examined met its stated product specification. This was also true of the commercial quality plate that we examined. We note that with respect to the one product control number referenced by petitioners, the relevant specification covers a broad range of steels. Again, all of the products we examined for this specification were within the stated specifications of this product. While the specifications of the product that Iscor intended to make, as opposed to the specifications that the product actually met and were sold to, are relevant in terms of analyzing costs of production, they are not relevant for this portion of our analysis.

While we agree with petitioners that at verification we found some minor inconsistencies between the product characteristics noted on Iscor's plate specification model match hierarchy tables and the actual specifications themselves, we did not find any inconsistencies which were significant enough to change the model match hierarchy. Therefore, we have not modified Iscor's plate specification model match hierarchy from the one used in the preliminary determination.

Comment 7

Petitioners allege that Iscor improperly constructed its product control numbers. They claim that material such as flange material, which is described by Iscor as the ''lowest of the low'' in the market, has generally been downgraded from other specification products, and Iscor admits that it cannot determine what the original specification might be. Petitioners assert that flange products cannot be said to be like other prime commercial products. See 19 U.S.C. 1677(16)(B)(ii). Petitioners also argue that like other non-prime products, flange material is not equal in commercial value to prime commercial products. See 19 U.S.C. 1677(16)(B)(iii). In petitioners view, flange material should not be compared to prime commercial grade or structural material sold in the United States.

Petitioners argue that certain downgraded products may also be sold outside the ordinary course of trade. Petitioners cite the factors in Laclede v. United States: the price of the merchandise compared to other home market sales, the profitability of the merchandise compared to other home market sales, the number of customers purchasing the product, quality assurances provided for the product, differences in how the product is sold, the end use of the product, the average size of the sale compared to other sales, and whether the product is distinguished by the seller from other merchandise of the same type. See Laclede Steel Co. v. United States, Slip Op. 95–144 (CIT August 11, 1995). Petitioners claim that many of these factors apply to this case. Petitioners

argue that the Department verified that certain products (such as flange material) are sold at a discount and are less profitable than prime products. Petitioners also state that these products are downgraded to more limited uses than originally intended when produced, and that they are sold as is without mill certificates. Unlike most products, according to petitioners, these products are inventoried and given a different designation, and these products are sold to a more limited group of customers.

Petitioners state that Iscor has configured its database in such a way that it has distorted product matching, calculation of difference-in-merchandise adjustments, and calculation of normal value. For these reasons, they claim that the final determination should be based on the facts available.

Respondent maintains that its home market database is usable and has been verified. Iscor notes that it has distinguished between prime and non-prime products. Iscor notes that it was instructed by the Department in its March 19, 1997, Supplemental Questionnaire to reclassify non-prime products to prime products if these products meet any specification (even if not the one originally intended). Iscor claims that it followed the Department's instructions and that it would be unjust to penalize Iscor for following these directions.

Iscor argues that its reclassified products are not sold outside the ordinary course of trade. Iscor states that in determining whether products are outside the ordinary course of trade the Department does not evaluate just one factor in isolation but all the circumstances particular to the sales in question. See Murata Mfg. Co. v. United States, 820 F. Supp. 603, 607 (CIT 1993) and Portland Cement and Clinker from Mexico, 62 FR 47626 (September 10, 1997). Iscor claims that its reclassified products are not sold for unusual reasons or under unusual circumstances, and urges the Department not to find these sales outside the ordinary course of trade.

DOC Position

We agree with respondent. At verification we found that Iscor produces and sells certain products as commercial quality products for general engineering applications where moderate bending, forming and drawing are involved. These products are not produced to specific mechanical property requirements and, as a result, they do not meet the same stringent specifications that may be characteristic of other Iscor products. Although Iscor's family of commercial products is sold to certain customers in the local market absent test certificates, this material is accompanied by analysis certificates which attest to its meeting certain chemical specifications.

During our review of Iscor's commercial quality products, we found that some of these products are comprised of steel which has been downgraded and reclassified during production from its originally intended specification. This material, like the commercial quality material intended as prime commercial quality material, meets the limited characteristics and specifications of Iscor's family of commercial quality products. We note that for purposes of a price-to-price comparison, the fact that some commercial quality material may originally not have been intended as commercial quality material is irrelevant. What is important is that the material sold and valued as commercial quality material meets the specifications for which it is valued and sold; and our analysis of sample sales at verification involving these products demonstrated that they conformed to the limited specifications and guidelines of commercial quality plate products. We acknowledge that the Department instructed Iscor to reclassify certain non-prime products classified as ''seconds'' as prime products if they met any specification (even if not the one originally intended).

Regarding petitioners' claim that Iscor's reclassified and downgraded products may be sold outside the ordinary course of trade, petitioners appear to be primarily concerned with flange material, the ''lowest of the low.'' We agree that several of the factors cited as criteria used in making such a determination with respect to sales outside the ordinary course of trade appear to apply in this case. For example, certain flange material is sold on a tender basis, and not per specific orders. As a result, these products may be sold at prices lower than other prime commercial grade steel products. The profitability of downgraded commercial material is also less than the profitability of as intended commercial grade material. There is limited information on the record with respect to the other criteria. However, we note that a very significant portion of the commercial grade home market sales that match to U.S. sales fail the cost test. Because the steel in question is the ''lowest of the low,'' these prices are presumably lower than those of as intended commercial quality steel. To the extent that certain sales in the relevant product control number are more properly designated as seconds than prime (and therefore should be in a separate control number and not matched to prime U.S. sales (see Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands, 62 FR 18476, 18482 (April 15, 1997)), we believe that these sales are most likely to be the ones that failed the cost test and are, therefore, already not being used in our matching analysis. Therefore, no further adjustment is required. See Analysis Memo, dated October 24, 1997.

Comment 8

According to petitioners, Iscor has improperly calculated its home market rebate adjustments. Petitioners note that two of the rebates, REBATE2H and REBATE6H, were allocated by calculating the total rebates paid on all direct and indirect sales and dividing that amount by the direct sales tonnage. This amount was allocated only to direct sales, which petitioners allege unfairly skews the price-to-price comparisons. Petitioners argue that the Department should not grant Iscor's reported REBATE2H or REBATE6H as adjustments to normal value; but for purposes of the cost/price test, the full rebates should be granted. Petitioners state that the amounts of two other rebates, REBATE3H and REBATE5H were skewed. Petitioners urge the Department to use facts available for this final determination, as the gross unit price net of rebates cannot be accurately determined for any sale receiving any of these rebates.

Iscor claims that it used a reasonable methodology in reporting rebates and that the Department verified these rebates. Iscor notes that customers were entitled to a rebate on both direct and indirect tonnage, that is irrespective of whether the material was bought directly from Iscor or through a merchant. Iscor argues that it correctly allocated the full rebate to direct sales because it was requested to state the rebates on a sales-specific basis and it only stated direct sales tonnage in Part B of its questionnaire response.

DOC Position

We agree, in part, with both petitioners and respondents. With respect to REBATE2H and REBATE6H, we agree with petitioners that the methodology employed by Iscor which calculates these rebates on the basis of both direct and indirect tons purchased (rather than on direct tons purchased) skews the treatment of these rebates. This methodology was not explained to the Department prior to verification. Indeed, Iscor's most detailed submission on this issue indicated that the rebates

were calculated using total customer tonnage (see response of June 27, 1997). Iscor's allocation methodology greatly overstates the rebate amounts for REBATE6H and REBATE2H for certain sales, and understates these amounts for other sales. Because these rebates are allocated across all direct sales to a particular customer, and customers may buy more than one type of steel, these distortions can significantly affect our analysis. We note, however, that Iscor's reported amounts for REBATE6H do not apply to home market sales that are matched to U.S. sales. Consequently, this portion of the comment is moot. Regarding REBATE2H, we are disallowing this rebate for the final determination with the exception noted below. For certain sales, we found at verification that essentially all sales were direct rather than a combination of direct and indirect. For these sales, we are continuing to use the reported rebate amount as an adjustment to normal value. (We note that certain sales for which this rebate was reported do not match to U.S. sales and although we are disallowing this rebate, for these sales this issue is moot.) With respect to REBATE3H and REBATE5H, the Department found at verification that Iscor's allocation methodology understated the actual amounts for the rebates had they been calculated on a transaction-specific basis. For the final determination, therefore, we are using the reported rebate amounts as adjustments to NV. See Analysis Memo, dated October 24, 1997.

Comment 9

Petitioners state that various errors in Iscor's U.S. sales database render it unreliable as a basis for the final determination. For example, petitioners identify certain discrepancies relating to ocean freight rates and early payment discounts. Petitioners argue that U.S. credit expenses were not verified as no documentation of payment dates was provided.

Iscor claims that the U.S. sales database has been verified. With respect to ocean freight, Iscor notes that the discrepancy arose because the reported amount was an estimate calculated prior to the actual shipment. Iscor states that the Department has the actual expense and that an estimated freight rate will always differ from the actual freight rate as estimated rates are negotiated prior to fixing sales price. With respect to early payment discounts, Iscor alleges that it employed a reasonable methodology.

DOC Position

We agree with petitioners in part. While the Department identified certain discrepancies relating to ocean freight rates, early payment discounts, and U.S. credit at verification, we disagree that these errors render Iscor's overall U.S. sales database unreliable. The Department considers these mistakes to have been relatively minor and not to call into question the integrity of the entire database. As a result, we are using Iscor's submitted data, with the revisions noted in these comments, and not using total facts available in this final determination.

With respect to ocean freight expenses reported by Iscor for certain sales, we found at verification that the reported amounts misstated the actual amounts for certain shipments. For the final determination, we have corrected ocean freight charges for these specific sales. For all other ocean freight expenses, where such charges are applicable, we are applying as facts available the highest reported amount for any U.S. sale. By not providing verifiable information for ocean freight expenses when such information was available to Iscor, we have determined that Iscor failed to cooperate by not acting to the best of its ability to comply with a request for information. See Certain Pasta From Turkey, 61 FR 30309, 30312 (June 14, 1996) (Pasta). Consequently, the use of adverse facts available under section 776(b) of the Act is warranted. Additionally, we did not convert ocean freight from rand to dollars as we did in the preliminary determination, as this amount was in fact reported in dollars.

With respect to U.S. credit expenses, we were unable to verify date of payment, since Iscor did not provide documentation of proof of payment for its U.S. sales during verification. As facts available for U.S. credit expenses, we are applying the highest reported U.S. credit expense to all U.S. sales. By not providing verifiable information for U.S. date of payment when such information was available to Iscor, we have determined that Iscor failed to cooperate by not acting to the best of its ability to comply with a request for information. See Pasta. Consequently, the use of adverse facts available under section 776(b) of the Act is warranted.

We are allowing Iscor's reported early payment discounts. Our review of Iscor's allocation methodology, which calculated a discount amount based on all early payment discounts and tons shipped to the customer was determined to be reasonable. The allocated amount reported is an average for all sales—including sales which received the discount and sales which did not receive the discount. Consequently, this amount will always differ from the discount amount specified by contract on individual sales, as the discount was not in fact paid on all sales. For the final determination we are continuing to use Iscor's reported U.S. early payment discount amounts.

Comment 10

Petitioners note that many U.S. sales were made on a theoretical weight basis and that because Iscor rolls larger than the nominal dimensions, customers who purchase on a theoretical weight basis actually receive more tons than ordered. Therefore, if the gross price is divided by the actual weight, it will result in a lower unit price than the theoretical weight based unit price. Petitioners argue that all price comparisons should be made on the same weight basis, and that all prices and expenses should be converted to actual weights. Respondent did not comment on this issue.

DOC Position

We agree with petitioners that all price comparisons should be made on the same weight basis. In its original and supplemental questionnaire responses, and as we found at verification, Iscor failed to report properly an actual to theoretical weight conversion factor for both its U.S. and home market sales, thereby prohibiting price comparisons to be made on the same weight basis. As facts available, we are applying the average of the verified U.S. ratio of theoretical to actual weights to all U.S. quantities and prices reported on an actual weight basis. We are applying the same conversion factor to CV. With respect to the home market, as facts available we are applying the verified ratio of theoretical to actual weights to all home market quantities and prices reported on an actual weight basis. We are applying this same conversion factor to the reported COP. See Analysis Memo, dated October 24, 1997. We are applying facts available to these adjustments under section 776(a)(2) because Iscor did not provide information requested by the Department in its submitted database.

Comment 11

According to petitioners, Iscor did not document its home market payment dates at verification. Therefore, they claim that the Department should not grant Iscor a downward adjustment to normal value for home market credit expenses due to the fact that the payment time could not be verified.

Iscor argues that the Department incorrectly rejected Iscor's proof of payment. Iscor notes that verification is a long process and it is often necessary

to work long hours to complete verification. Iscor explains that because the verification continued past normal business hours on the last day of verification it lost access to the office that had proof of payment records. Iscor states that it forwarded this information to the Department representatives after verification, but the Department rejected these records. Iscor urges the Department to consider proof of payment to be verified because it made a good faith effort to provide the information to the verification team.

In responding to petitioners, Iscor noted that its data system does not provide transaction specific payment dates because local sales are paid by statement, not by individual invoice. Iscor claims that it devised a reasonable methodology as the most accurate way to determine payment dates based on the information that it did have.

DOC Position

We agree with petitioners that we were unable to verify Iscor's home market payment dates. While Iscor may have devised a reasonable date of payment methodology, we were not able to verify this methodology on site. The Department appropriately rejected Iscor's post-verification date of payment submission as untimely. Date of payment information and source documentation was clearly requested in the Department's verification outline, which was provided to Iscor in advance of verification. This information should have been prepared in advance of the start of verification and should have been part of the sales trace packages at the time they were presented to the Department. After verification had ended, the verification team was not in a position to tie date of sale information to original company records or otherwise verify any information regarding payment date. Therefore, we are denying home market credit expenses as an adjustment to normal value.

Comment 12

According to petitioners, no offset to normal value for pre-sale warehousing should be granted as the Department was unable to verify pre-sale warehousing expenses. Respondent did not comment on this issue.

DOC Position

We disagree with petitioners. The Department is not required to verify every item in a respondent's questionnaire response. Rather, in conducting verification, the Department must prioritize its examination of a respondent's reported data according to factors such as time availability, a respondent's general level of compliance, and the relative dollar value of the reported amounts. ''[V]erfication is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness. Normally, an audit entails selective examination rather than testing of an entire universe.'' Bomont Indus. v. United States, 733 F. Supp. 1507, 1508 (CIT 1990). In this case, time did not permit us to verify Iscor's reported pre-sale warehousing expenses. Because we have no evidence that would lead us to disregard respondent's reported pre-sale warehousing expenses, we are granting this adjustment for the final determination.

Comment 13

Petitioners argue that the scope of the investigation should be clarified to include: (a) purported ''alloy'' plate, sold as ASTM A36 or another carbon plate specification, to which trace amounts of inexpensive alloying agents have been added (''low-alloy plate'') and (b) subject merchandise sold as having a 3⁄16″ nominal thickness but ''rolled light'' to an actual thickness of just under 4.75mm (the boundary of the tariff classifications set forth in the scope description of the preliminary determination) (''light-rolled 3⁄16″ plate''). Petitioners state that the Department routinely makes minor changes to its scope descriptions, both during investigations and after an order is issued, particularly where this is thought necessary to prevent circumvention. See Small Diameter Circular Seamless Carbon and Alloy Steel Standard, line and Pressure pipe from Italy, 60 FR 31981, 31983–85 (June 19, 1995) and Freshwater Crawfish Tail Meat from the People's Republic of China, 62 FR 41347, 41357–58 (August 1, 1997).

Petitioners claim that any argument that the International Trade Commission (ITC) preliminary determination precludes this scope clarification is based on a fundamental misunderstanding of the interrelationship between the scope of investigation, the industry examined by the ITC (defined as producers of the like product), and the requirement for industry support. Petitioners note that although the Department frequently modifies the scope of an investigation during its course, the Department is expressly prohibited by statute from reconsidering the issue of industry support. Petitioners claim that the Department has explicitly rejected the theory that the Department cannot include merchandise within the scope of an investigation unless precisely the same merchandise was include in the ITC's injury determination. See Hot-Rolled Lead and Bismiuth Carbon Steel Products from the United Kingdom and Germany, 62 FR 34213, 34215 (June 25, 1997) (initiation of anticircumvention inquiry). Petitioners add that none of the anticircumvention provisions require a new injury determination.

According to petitioners, they have demonstrated in their July 3, 1997, submission that, using the five factors traditionally employed by the Department to decide whether particular products are within the same class or kind covered by the order, low-alloy plate and light-rolled 3⁄16″ plate share the same general physical characteristics as other subject plate; that ultimate purchasers have the same expectations of low-alloy plate and light-rolled 3⁄16″ plate as of other subject plate; and that low-alloy plate and light-rolled 3⁄16″ plate are sold in the same channels of trade, for the same ultimate uses, and at the same cost, as other subject plate.

Petitioners assert that all 3⁄16″ nominal thickness plate is within the scope of the investigation regardless of whether its actual thickness is less than 4.75mm. They state that because 3⁄16″ plate is an important part of the market for thin gauge plates, the scope should be clarified to state that it covers plate 4.75mm in thickness or more in nominal or actual thickness. According to petitioners, any customer ordering a 3⁄16″ A36 plate, for example, would be willing to accept any thickness within the tolerance for that size plate. Thus, any plate within the tolerance for 4.75mm nominal thickness plate will compete directly with any other plate within the tolerance.

Petitioners argue that all cut-to-length plate that meets common non-alloy plate specifications is within the scope of the investigation, regardless of the presence of alloys in excess of those specified in the Harmonized Tariff Schedule of the United States (''HTSUS'') categories for non-alloy steel. They state that the addition of such alloys does not change the specification, grade, physical characteristics or applications of the plate. Petitioners believe the published description of the scope of the investigation should be amended to make clear that it covers all cut-to-length plate made to common non-alloy plate specifications. This includes, but is not limited to, ASTM A36, A572, A709, A588, A283, PVQ A516, A573, A455, and ABS grades, as well as chemical or proprietary equivalents to

those specifications, regardless of the alloy content or tariff classification.

Petitioners allege that certain producers in the countries subject to these investigations on cut-to-length carbon steel plate have begun to vary the alloy content slightly so that these products no longer meet the tariff definition of non-alloy steel. In particular, petitioners believe that certain producers may be adding boron to their chemistries, because boron is relatively inexpensive. Petitioners believe such products are being used in identical applications as other subject merchandise. In petitioners' view, in any instance where the added alloy does not change the performance characteristics of the plate or affect the product's classification within the industry specification the product should remain within the scope of the investigation.

Iscor urges the Department to reject petitioners' scope clarification because this is not a routine minor change nor have petitioners submitted any information on the record that Iscor or any other South African producer is circumventing or trying to circumvent the preliminary determination in this investigation.

DOC Position

We disagree with petitioners. See memorandum on Scope of Investigations on Carbon Steel Plate, Joseph Spetrini to Robert S. LaRussa (October 24, 1997).

Comment 14

Iscor and Highveld urge the Department to correct its exchange rate methodology.

Highveld argues that the Department should use without exception the actual daily exchange rate certified by the Federal Reserve Bank of New York to convert the South African currency into U.S. dollars instead of a benchmark rate. According to Highveld, both the law and Department practice direct the Department to use actual unadjusted daily exchange rates. See Section 773A(a) of the Act and the Statement of Administrative Action, H.R. Doc. No. 103–316, at 841–842 (1994). See also Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 61 FR 69067, 69071 (December 31, 1996). Highveld notes that Certain Welded Carbon Steel Pipe and Tube from Turkey states that the actual daily exchange rates were used rather than the benchmark rate because the foreign currency depreciated substantially against the U.S. dollar of the period of review. Highveld also claims that the Department is reviewing the application of the benchmark in situations where the foreign currency depreciates substantially against the U.S. dollar over the period of investigation or review, situations in which it may be appropriate to use daily rates. See Department of Commerce Policy Bulletin 96–1: Import Administration Exchange Rate Methodology, 61 FR 9434, 9435 n.2 (March 8, 1996). Highveld claims that the South African currency steadily and substantially depreciated against the U.S. dollar during the period of investigation. It cites the sales verification report where verifiers noted a ''sharp devaluation during the POI.''

Highveld also states that there need not be a determination of significant inflation or hyperinflation. Highveld cites Certain Welded Carbon Steel Pipe and Tube from Turkey and states that Department practice does not require a claim of significant inflation in order to use daily exchange rates and that daily exchange rates may be used on two separate occasions: (a) if the foreign currency has undergone a substantial depreciation against the dollar or (b) if domestic price inflation is significant. Highveld claims that the first scenario occurred for this case and urges the Department to use daily exchange rates.

Iscor argues that the Department incorrectly used a benchmark rate to convert South African rand into U.S. dollars instead of the daily rate on certain days of the POI because of currency fluctuations. Iscor maintains that the use of the benchmark rate is contrary to section 773A(a) of the law and Commerce practice (Certain Welded Carbon Steel Pipe and Tube from Turkey). Iscor takes issue with the Department's statement in the preliminary determination regarding the decline in the South African rand. Iscor argues that it is not a requirement in the law, regulations or Policy Bulletin (see above) that South Africa be a high-inflation economy in order not to use a benchmark. Like Highveld, Iscor urges the Department to correct its exchange rate methodology in the final determination and use the actual unadjusted daily exchange rates instead of the benchmark rates for all dates.

Petitioners argue that the currency conversion methodology used in the preliminary determination was correct. In petitioners' view, the Department's methodology was both lawful and consistent with past practice. Petitioners cite section 773A of the Act and the SAA as stating that in converting foreign currencies into U.S. dollars fluctuations in exchange rates shall be ignored. Petitioners argue that the Department's preliminary determination in this case is entirely consistent with the Policy Bulletin on Currency Conversions. (See Department of Commerce Policy Bulletin 96–1: Import Administration Exchange Rate Methodology, 61 FR 9434, 9435 n.2 (March 8, 1996).)

Petitioners explain that the reason the methodology used in the preliminary determination differs from that in Certain Welded Carbon Steel Pipe and Tube from Turkey is that the Turkish case involved a hyperinflationary economy in which the currency was undergoing a dramatic depreciation. Petitioners state that this case does not involve dramatic currency depreciation driven by hyperinflation, and cite the Department's finding in the preliminary determination that the decline in the rand was not so precipitous and large as to reasonably preclude the occurrence of fluctuations. Petitioners argue that Highveld's statements that the rand underwent a sharp devaluation quoted in the verification report is not evidence of a precipitous and large depreciation in the rand and the fact that the benchmark was used only for certain days also argues against the existence of a precipitous and large depreciation in the rand.

DOC Position

We agree with petitioners. This case is distinguished from Certain Welded Carbon Steel Pipe and Tube from Turkey as that case involved a hyperinflationary economy in which the currency was undergoing a dramatic depreciation. There is no evidence in the present case of either a precipitous and large depreciation in the rand relative to the dollar or of hyperinflation in the South African market. As petitioners correctly note, section 773A of the Act and the SAA both state that in converting foreign currencies into U.S. dollars fluctuations in exchange rates shall be ignored. The Department's use of benchmark exchange rates in place of daily exchange rates in instances when a foreign currency is considered fluctuating is consistent with these statutory requirements. We are continuing to use benchmark rates in place of daily exchange rates in instances when a foreign currency is considered fluctuating for the final determination. For further discussion of this issue, see the ''Currency Conversion'' section of this notice.

Comment 15

Petitioners argue that Highveld's per-unit COP data do not properly account for differences in physical characteristics. Petitioners further contend that Highveld's methodology

ignores cost differences due to differences in each product's processing time per ton. Petitioners support these arguments by citing that (1) Highveld allocated the same per-ton conversion costs to slabs, billets, and blooms although they have different production processes, and (2) Highveld allocated conversion costs for the flat-products plant based on the tonnage of slab inputs compared to the tonnage of slab inputs used for other non-subject products produced in the plant. The petitioners reason that all products produced by the flat products plant require different machine times per ton and, therefore, should have different per-unit conversion costs according to their thickness, width, length, and other extras. Petitioners argue that Highveld should have at least allocated the conversion costs for as-rolled products over the output of finished products instead of over the input.

Highveld asserts that it properly adjusted its normal accounting records, which calculates a single cost for all products, in order to capture the cost differences due to the physical characteristics on which the Department based its analysis. Highveld notes that it adjusted costs for differences in chemical components, additional labor and overhead costs associated with normalizing, and labor and variable overhead costs based on yield factors to account for different rolling costs for different dimensions of merchandise.

DOC Position

We agree with the petitioners in part that Highveld's reporting methodology failed to fully account for cost differences associated with differences in certain physical characteristics of the subject merchandise. Highveld's reported COP and CV data does account for (1) chemical input differences for differing quality and types of steel produced, (2) the additional costs related to producing normalized products, and (3) yield loss differences between differing dimensions of merchandise. Highveld's reported cost data, however, failed to account for cost differences associated with processing time differences between varying dimensions of finished product. Our verification of Highveld's reported cost data showed that the variable cost of manufacturing the subject merchandise differs depending on the dimensions of the product produced. We therefore adjusted Highveld's reported costs to reflect these dimensional cost differences.

Comment 16

Highveld claims that, in its cost verification report, the Department miscalculates the difference between the COM in Highveld's accounting system and the COM submitted by the company. Highveld agrees with two of the adjustments to the reconciliation identified by the Department in its cost verification report. Highveld objects, however, to the Department's proposed adjustment to value the cost of the October 1995 to December 1995 sales from 1995 standard per-unit costs to 1996 standard per-unit costs. Highveld contends that the Department should use the average of the per-unit costs reported to the Department in its Section D response, which results in an insignificant difference between the COM submitted to the Department and the COM in Highveld's accounting system. Highveld maintains that its reconciliation of submitted COM to that contained in its cost accounting system shows only a small difference. Any adjustment to the submitted costs for such a small difference, according to Highveld, is completely unjustifiable.

The petitioners urge the Department to base Highveld's COM on total facts available because Highveld was unable to reconcile its reported COM with its cost accounting system. If the Department does not base the final determination on total facts available, petitioners contend that the Department should at least adjust COM by the overall difference between Highveld's reported COM and its cost accounting system. The petitioners contend that the flaws in Highveld's submitted COM reconciliation identified by the Department should be accounted for when comparing the total submitted COM with that contained in Highveld's cost accounting system for the same time period. In particular, the petitioners claim that Highveld incorrectly valued the cost of its 1995 sales using 1995 standard costs rather than 1996 standard costs which were the basis of its cost response.

DOC Position

We agree with Highveld that the cost verification report miscalculated the difference between its submitted COM and that recorded in its accounting system. We reviewed the revised reconciliation calculation as contained in the cost verification report and noted that G&A was erroneously computed. In the normal course of business, Highveld allocates G&A expenses to its steel making cost centers, including these expenses as a cost of manufacturing, and ultimately in the cost of sales for financial statement purposes. Because Highveld's total COM per its accounting records included G&A expenses while the submitted COM did not, we need to adjust the submitted COM for the total amount of G&A expenses reported to the Department for subject merchandise. In addition, since Highveld's response is based on its actual cost of manufacturing during 1996 and not its 1996 standard cost of manufacturing, we agree with Highveld that the October through December 1995 sales should be valued based on the average cost of manufacturing as contained in its response for purposes of the cost reconciliation. We are satisfied that the reconciliation provided by Highveld in its September 15, 1997, case brief establishes that the reported costs reasonably agree with Highveld's accounting records. Therefore, we did not adjust Highveld's submitted costs for this difference.

Comment 17

Petitioners contend that the Department should increase Highveld's COP because Highveld did not include in the submitted costs the full G&A and interest expense on materials purchased from other divisions within Highveld.

Highveld argues that G&A and interest for materials transferred from other divisions are already included in the calculation of G&A and interest for the subject merchandise. Highveld reasons that if the Department were to include these costs as a part of material costs, it would be double counting G&A and interest.

DOC Position

We agree with Highveld. The Department normally treats the cost of inputs obtained from other divisions within the same company as a cost incurred by that company (i.e., it is not an input obtained from an affiliate, it is an input produced by the respondent). In this instance we use the cost incurred by the company to produce the input. See e.g., Final Results of Antidumping Duty Administration Review: Certain Forged Steel Crankshafts from the United Kingdom, 61 FR 54613, 54614 (October 21, 1996) (''Crankshafts''). We state in Crankshafts that although respondent describes companies as ''related'' in various sections of their questionnaire response, the weight of record evidence (e.g., corporate structure charts and audited financial statements) indicate that they are divisions of the same corporation. Thus, in Crankshafts the Department used the division's actual verified cost of producing the input.

Highveld's record evidence indicates that the inputs it identified as obtained from ''related'' parties were obtained from other divisions within the company. While the Department's normal practice is to value inputs from divisions at actual cost, Highveld elected to value these inputs at its transfer prices for submission purposes. Our verification of Highveld's reported cost data showed that the transfer prices for these inputs were higher than the COM. Since the transfer price was higher than the cost of manufacturing each input, Highveld did not understate input costs in its reported COP and CV data. We, therefore, agree with Highveld that to include G&A and interest as part of material costs would lead to double counting of G&A and interest.

Comment 18

Petitioners claim that Highveld improperly allocated labor costs between fixed and variable production costs by treating virtually all labor costs as fixed. Petitioners allege that Highveld's allocation of variable and fixed costs distorts the Department's difference-in-merchandise comparison and product-matching.

Highveld maintains that it properly reported total direct labor for the subject merchandise and that variable labor costs are not under-reported for the Department's differences-in-merchandise adjustment.

DOC Position

We agree with Highveld that it properly allocated labor costs between variable and fixed costs using percentages based on the historical experience of its plant management. Because Highveld reported in its Section D response both variable and fixed per-unit labor costs as direct labor, we reclassified Highveld's reported fixed labor costs as fixed overhead costs to compute the difference-in-merchandise adjustment.

Comment 19

Petitioners recommend that, if accepted, Highveld's Section D costs be used as the basis for difference-in-merchandise adjustments and product matching.

Highveld agrees that its Section D costs should be used to calculate the differences-in-merchandise adjustment.

DOC Position

We agree with both petitioners and Highveld. The Department used Highveld's Section D costs to calculate the differences-in-merchandise adjustments for the final determination.

Comment 20

Petitioners note that Highveld incorrectly calculated G&A expenses by using different divisional levels in the numerator and denominator for the calculation. Petitioners suggest that the Department apply the recalculated G&A expenses to Highveld's COP and CV.

Highveld agrees that the G&A expense rate recalculated at verification should be used for the final determination.

DOC Position

We agree with both petitioners and Highveld. The Department used Highveld's recalculated G&A expense to calculate COP and CV for the final determination.

Comment 21

Highveld maintains that it received net interest income and that it incurred no interest expense associated with the production of the subject merchandise. Therefore, Highveld contends that COP and CV interest expense should be zero. Highveld argues that the Department's consolidated interest expense calculation should exclude the entire amount of interest expense associated with Columbus Joint Venture, an entity in which Highveld has only a 33 percent equity interest. Highveld contends that having a 33 percent equity interest fails to meet the requirements for consolidation. Highveld cites Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 62 FR 18404, 18445 (April 15, 1997) and Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand, 57 FR 21065, 21069 (May 18, 1992), to support its position that the Department should exclude the Columbus Joint Venture from Highveld's consolidated interest expense computation since there is no parent-subsidiary corporate relationship or parental control between these two companies. To support its claim, Highveld notes that the Department did not consolidate a joint venture in which the respondent had 50 percent equity ownership in Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands, 59 FR 23684, 23688 (May 6, 1994), because the Department determined that parental control did not exist. Highveld notes that it is not a parent to Columbus Joint Venture and it does not exercise parental control.

Petitioners assert that Highveld's corporate consolidated financial expenses must be used to calculate interest expense for COP and CV. Petitioners state that the cases cited by Highveld show that the Department calculates a consolidated interest factor where the parent exercises control over the subsidiary. Since Highveld Steel Works is controlled by the corporate parent, Highveld Steel and Vanadium Corporation Limited, the use of the consolidated interest expense rate is appropriate. Petitioners further argue that since Highveld includes interest expenses for the Columbus Joint Venture in its consolidated corporate financial statement and that the statute at 19 U.S.C. 1677b(f)(1)(A) provides that costs shall normally be calculated based on the exporter's or producer's records if they are kept in accordance with the generally accepted accounting principles (''GAAP'') of the exporting country, the Department should include all interest expenses consolidated by Highveld in its financial statement in calculating a corporate interest expense rate.

DOC Position

We agree with petitioners. The Department normally calculates interest expense based on the respondent's audited consolidated financial statements for the year that most closely corresponds to the POI. Highveld consolidated the financial results of the Columbus Joint Venture in its 1996 annual audited financial statements. Since Highveld's audited financial statements were found to be fairly presented and in conformity with the GAAP of South Africa, we have no reason to believe that the financial results for the Columbus Joint Venture should not have been included in the consolidated financial statements for Highveld.

We disagree with Highveld that the cases it cited support its argument. In Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 62 FR 18404, 18445 (April 15, 1997), there were several companies which met the requirements for consolidation but because Korean GAAP did not require companies to prepare consolidated financial statements, no audited consolidation was prepared. We therefore combined the separate audited financial statements of the companies to calculate a group-level interest expense factor. In Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-Phenylene Terephthalamide from the Netherlands, 59 FR 23684, 23688 (May 6, 1994) and in Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel

Butt-Weld Pipe Fittings from Thailand, 57 FR 21065, 21069 (May 18, 1992), the respondents were not included in the audited consolidated financial statements of the parent because they did not meet the consolidation requirements of their home country GAAP. In this case, however, the Columbus Joint Venture is included in the audited consolidated financial statements of Highveld, in accordance with its home country GAAP. Therefore, none of these circumstances apply to Highveld, as Highveld included Columbus Joint Venture in its consolidated financial statements.

Comment 22

Petitioners argue that the final determination for Highveld should be based on total facts available. Petitioners state that it has documented in previous comments that Highveld's cost and price responses are completely unreliable and unusable in their present form. Petitioners note that the number of changes that the Department would need to make to use Highveld's sales data are substantial, to the extent the data is usable at all. Petitioners argue that Highveld's COP and CV data are completely unusable (see comments above). In petitioners' view, as the cost data are unusable, it is impossible to perform the below-cost sales analysis, use the CV data, or calculate difference in merchandise adjustments. Indeed, petitioners claim that Highveld's entire submission is unreliable and unverified and that the Department should base the final determination on facts available. As facts available, petitioners propose that the Department use the higher of the highest rate alleged in the petition or the highest rate found for another producer.

Highveld argues that the final determination should be based on its submitted data, not facts available. Highveld acknowledges that the Department found several errors in its reported information, but claims that this data was substantially verified and that any errors were invariably minor and not sufficient for the Department to resort to facts available. See Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys From the Republic of Kazakstan, 62 FR 2648, 2650 (January 17, 1997) and Certain Cut-To-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review, 61 FR 13834 (March 28, 1996). To the extent the Department finds errors or gaps in Highveld's information, respondent argues, it should revise the data using non-adverse facts available.

Highveld also objects to petitioners' claim that the Department should draw adverse inferences. In Highveld's view, the minor errors that were found are not sufficient to cause the Department to resort to adverse inferences. Highveld states that it did not fail to submit a questionnaire response, provide a response which was wholly unverifiable, or refuse to provide information to the Department. See Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany, 61 FR 38166, 38167 (July 23, 1996); Antifriction Bearings, 61 FR 35713, 35715–6 (June 8, 1996); Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey, 61 FR 30309, 30312 (June 14, 1996). Highveld also cites other cases in which the Department did not apply adverse inferences, and states that in comparison with these cases, the application of adverse inferences is not appropriate in this case. See Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From South Africa, 61 FR 24271 (May 14, 1996) (Circular Welded Non-Alloy Steel Pipe From South Africa).

Highveld claims that the information it presented is not completely unreliable as suggested by petitioners, and the Department should not use total facts available or use adverse inferences in its final determination.

Petitioners counter that due to time and resource constraints, verification cannot be more than a spot-check of information provided by respondent. In petitioners' view, the sheer volume and pervasiveness of the errors discovered during verification call into question the accuracy and complement of the whole response. See Circular Welded Non-Alloy Steel Pipe From South Africa, 61 FR 24271, 24274. Petitioners note that the statute allows the Department to use adverse facts available whenever an interested party has failed to cooperate by not acting to the best of its ability. Petitioners claim that the extensive pattern of inaccuracies and omissions is evidence of Highveld's failure to cooperate. Petitioners argue that given the extensive deficiencies found with respect to nearly every major cost and price adjustment, the Department should assign Highveld an adverse facts available margin based on the highest margin found for another producer or the highest rate in the petition.

DOC Position

We agree with respondent that the final determination in this investigation should not be based on total facts available. While the Department agrees with petitioners that there are errors and omissions in Highveld's responses, we do not believe that the scope and impact of the errors in question are sufficient to warrant the application of facts available in the case as a whole. See Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 37014, 37015 (July 10, 1997). We note that the magnitude of the errors in this investigation are substantially less than those noted in Circular Welded Non-Alloy Steel Pipe From South Africa, 61 FR 24271, 24272–3 (May 14, 1996). With appropriate corrections, the Department has determined that Highveld's responses are usable for purposes for the purpose of margin calculations. Pursuant to sections 776 and 782(e) of the Act, the Department has used the facts otherwise available when necessary.

Comment 23

Highveld argues that the Department incorrectly determined there to be one level of trade in the preliminary determination. Highveld claims that sales in the home market and sales in the U.S. are at different levels of trade and that the Department should grant it a CEP offset. Highveld does not contest the Department's determination that there was only a single level of trade in the home market, but does disagree with the Department's finding that home market and U.S. sales are at the same level of trade.

Highveld notes that the Department determines normal value for sales at the same level of trade as the U.S. sales and that the starting price for CEP is the first sale to an unaffiliated buyer from which profit and expenses are deducted under section 772(d) of the Act. Highveld cites the preliminary determination which states that this deduction ''will normally yield a different level of trade for the CEP than for the later resale which is used for the starting price.'' Highveld states that to determine whether sales are at different levels of trade, the Department considers the stage in the marketing process, taking into account the class of customer, selling functions and expenses associated with these functions. (See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 62 FR 2081, 2107 (January 15, 1997) (Antifriction Bearings).) Highveld then cites the statute at 19 U.S.C.

1677b(a)(7)(A), which provides for a CEP offset if there is a difference in level of trade between CEP versus EP, but the data available do not provide an appropriate basis to determine a level of trade adjustment.

Highveld argues that record information demonstrates Highveld's home market sales are at a different, more remote, level of trade than its U.S. sales. Highveld claims its home market and U.S. sales are to a different class of customer and that the selling functions performed are qualitatively and quantitatively different (see Highveld's sales verification report, at pages 13, 23–25).

Highveld posits the existence of four marketing stages for the subject merchandise: (1) Production; (2) Sale to Distributor; (3) Sale to Steel Service Center (SSC); and, (4) Sale to End-User. Highveld claims that its home market sales are at stage 3—to SCCs. Highveld states that its U.S. CEP sales to Newco are at stage 2—to distributors. Highveld argues that since the selling functions of the U.S. importer (Newco) are accounted for by a deduction under provision of the law, they cannot be included in the level of trade analysis. (See 62 FR 27295, 27370 (May 19, 1997) and Antifriction Bearings.)

Highveld alleges that it has an additional layer of selling activity in the home market which is qualitatively and quantitatively different and amounts to a different selling function. Highveld claims that in the home market, it performs the following sales activities—rolling planning, order status feedback, pricing support, extensive post-sale service, market research, technical advice, advertising, freight and delivery arrangements, quality control, quality assurance, organizations and memberships and customer relations. Highveld states that in the U.S. sales functions are limited to moderate post-sales service, market discussions and meetings, freight and delivery arrangement, quality control and quality assurance. Highveld cites the Preliminary Results, 62 FR at 31965–31966 where the Department notes several differences in selling functions for U.S. and home market sales. Highveld cites the Department's Final Rules, 62 FR 27295, 27371, where it states, ''[S]ubstantial differences in the amount of selling expenses associated with two groups of sales also demonstrates that the two groups are at different levels of trade.''

Highveld states that since the Department cannot quantify whether Highveld's different levels of trade affect price comparability, the Department should grant Highveld a CEP offset.

Petitioners support the Department's determination in the preliminary determination that a single level trade exists in both the home market and the U.S. market, and urges the Department to reach the same conclusion for the final determination. Petitioners state that neither difference in selling functions or customer descriptions are alone sufficient to establish different levels of trade. See Certain Welded Steel Pipe and Tube from Turkey, 61 FR 69067, 69068. Petitioners claim that the record in this review does not contain sufficient evidence of differentiated selling functions to justify more than one level of trade. Petitioners point to Highveld's sales verification report, at page 23, where the verifiers stated that selling functions were handled the same by Highveld, regardless of their classification and that Highveld differentiated selling functions based on the quantity of the sale rather than the level of trade. Petitioners claim that market research, technical advice, product development research, freight and delivery, quality assurance programs, and production planning were all performed in both markets. Petitioners noted that the only selling function that appeared to be different was personnel training, but that verifiers found this function to be very limited in scope (see Highveld's sales verification report). Petitioners acknowledge other small differences (i.e., just-in-time delivery and advertising) (Preliminary Results at 62 FR 31966). Petitioners state that none of these differences are sufficient enough to justify differing levels of trade, and that the Department should not grant a CEP offset.

In response to petitioners' comments Highveld continues to maintain that its home market sales are at a different, more remote level of trade from its U.S. sales, and that the Department should grant a CEP offset. Highveld claims that petitioners do not dispute the fact that its home market and U.S. sales are at a different stage of the marketing process. Highveld disputes petitioners' claim that selling functions are the same in both markets.

Highveld notes that market research is focused primarily on the home market, and that any comparable functions performed by Newco would be excluded from the level of trade analysis. With respect to technical advice and product development research, Highveld claims that there are qualitative and quantitative differences in the advice provided. Highveld states that U.S. production planning involves shipments planned well in advance, whereas home market planning entails more short-term demands and requests. Highveld notes petitioners' acknowledgment of differences between personnel training, and states that this difference should not be ignored because it is limited in scope. Highveld reiterates the additional differences in selling functions cited in the preliminary determination, and again asks the Department to grant it a CEP offset.

Petitioners counter that Highveld's U.S. and home market sales are at the same level of trade and no CEP offset is warranted. Petitioners dispute Highveld's claim that its home market sales are more remote than its U.S. sales. Petitioners note that steel service centers and distributors are not necessarily at different stages in the marketing process. Petitioners state that service centers are often themselves distributors and that no recorded evidence indicates a clear distinction between service centers and other distributors. According to petitioners, both distributors and service centers may sell to other distributors and service centers or directly to end-users.

Petitioners claim that many of Highveld's home market selling activities do not appear to be tangible. Petitioners note that Highveld must do rolling planning on all sales, in order to maximize the efficient use of its mill. Petitioners state that there is no record evidence that just-in-time delivery plays any significant role in Highveld's sales as it generally produces all sales to order. Petitioners note that pricing supports are simply discounts and rebates which are already taken into account in the Department's analysis, along with warranty expenses. Petitioners argue that the record does not demonstrate that customer care visits, market share research or liaison meetings result in any significant costs or effort on Highveld's part. Petitioners note that Highveld acknowledges that it has after-sales service, freight and delivery arrangements, market discussion and liaison meetings, and quality control and assurance for sales in both markets. In petitioners view, there is not a quantitative or qualitative difference in the selling functions performed in the two markets and no CEP offset should be granted.

DOC Position

We agree in part with petitioners and with Highveld. In determining whether separate levels of trade actually existed between the U.S. and home markets, we examined Highveld's marketing stages, reviewing the chains of distribution and customer categories reported in the home market and in the United States. Highveld argues that its sales in the

home market are more remote and at a different stage of the marketing process from its sales in the United States. While we agree with petitioners that Highveld's distinction between SSCs and distributors is questionable, we do agree with Highveld that after Newco's selling functions are accounted for by a deduction under section 772 (d) of the Act, they cannot be included in the level of trade analysis.

With respect to the selling activities described by Highveld as representative of the greater quantitative and qualitative selling functions associated with home market sales compared to U.S. sales, many home market selling functions, although greater in number, appear to be activities similar in nature to the selling functions associated with U.S. sales. In addition, some of the home market selling functions detailed by Highveld do not characterize services provided to customers.

In some instances the activities characterized by Highveld as selling functions are more appropriately characterized as activities and functions associated with production and manufacturing processes. Rolling planning, for example, is something Highveld conducts in order to maintain efficiency during production, and it is required for products sold in all markets. Nor do we consider order status feedback and the conveyance to customers of the progress of particular orders to be a selling function. In any case, these services are provided to customers in both markets.

With respect to pricing supports, such as discounts and rebates, these are already accounted for in the calculation of NV, and we do not consider them to be distinct selling functions which are relevant to our level of trade analysis. Neither do various home market organizations and memberships to which Highveld belongs and makes contributions and payments to relate to services provided to customers *per se*.

A number of other selling functions are provided to customers in both markets. These include efforts to meet customer delivery schedules, freight arrangement and delivery services, and quality assurance and control (including line inspection and material testing and certification). Highveld performs functions relating to market discussions and research, and customer liaison meetings in both markets. Although Highveld officials have less opportunity to physically meet with U.S. customers than with those in the home market, they nonetheless do so regularly during each year. While Newco is responsible for conducting initial U.S. market research concerning market conditions in preparation for visits from Highveld officials, joint customer calls made by Highveld and Newco officials evaluate further these conditions and findings.

We agree with petitioners that because most of Highveld's sales involve merchandise produced to order and not sold from inventory, just-in-time delivery is not a significant selling function attributable to sales in one market versus another. Regarding technical advise, although Newco is responsible for providing initial support to U.S. customers, Highveld provides any necessary back-up, if requested.

We do acknowledge that there are some minimal differences in selling functions between the two markets. These differences have not changed from the ones noted in our preliminary determination, although as petitioners note these services appear to be relatively minimal and in our judgment are not sufficient to warrant a difference in LOT. For this final determination, we are finding that Highveld has a single level of trade in both markets. Accordingly, we have not granted Highveld a CEP offset for this final determination.

Comment 24

Highveld argues that the Department inappropriately matched U.S. specification A 515/516 Grade 70 to a less similar home market product. Highveld notes the Department's model matching program did not match the U.S. product with the home market product deemed by Highveld to be the closest match (SABS 1431 300WA). Highveld states that even though the SABS 1431 300WA is the best match with the U.S. model, in terms of physical properties such as mechanical properties and chemical composition, the model match program automatically discounted that model because it is classified as structural quality. Instead, according to Highveld, the Department's model match scenario chose a home market specification of BS 1501 151 430A as a best match because this specification is classified as the same pressure vessel quality as the U.S. model. Highveld cites the Sales Verification Exhibit 9 where evidence is submitted that states that 300WA and A515/516 tend to be higher strength with regard to ultimate tensile strength and yield strength. Highveld claims that the 430A is a much softer steel than the U.S. model; that 300WA and A515/516 may be rolled from the same plate but 430A may not; and that the mechanical and chemical similarities between the 300WA and the A515/516 translate into cost and value similarities. Highveld states that since the 430A requires a different chemical composition and mechanical properties, it requires different costs of production. In conclusion, Highveld reiterates that the better model match is U.S. model A515/516 to the home market model 300WA. Petitioners did not comment on this issue.

DOC Position

We disagree with respondents. In the ''Fair Value Comparisons'' section of this notice we note that when making product comparisons the Department uses the following criteria listed in order of preference: paint, quality, specification and/or grade, heat treatments, standard thickness, standard width, whether or not checkered, and descaling. Based on the Department's model matching hierarchy, products of the same quality will be matched to one another before being matched on the basis of similar product specifications. Consequently, this comment is moot, as changing the plate specification weighting as advocated by respondents will not effect the results of the Department's model match program.

Comment 25

With regard to U.S. warranty expense, Highveld urges the Department to utilize the more precise percentage calculated during the Sales Verification at Newco. According to respondent, at the start of verification, Highveld presented a percentage that it had calculated as the cost of ''returns'' (the cost to Newco of remedying defective merchandise, similar to warranty claims). However, Highveld observes that verifiers decided that this calculation was not specific enough and spent considerable time and effort to recalculate a more specific percentage (see Highveld's sales verification report, at page 59). It is this more specific rate that Highveld asks the Department to use to calculate the U.S. warranty expense for the final determination.

Petitioners state that previously unreported returns of merchandise should be deducted from CEP as a warranty expense. Petitioners separately argue that another previously unreported warranty expense should be subtracted from CEP.

In response to petitioners' comments, Highveld reiterates that the more precise warranty allocation calculated at verification should be used in the final determination.

DOC Position

We disagree with respondents. Although Highveld provided documentation at verification which it indicated was a more precise

determination of U.S. warranty expenses (see Highveld's sales verification report, at pages 58–59), the Department also found certain unreported claims and credits relating to sales of subject merchandise. Because we are not confident that the amount Highveld contends is the more precise amount includes all claims which should have been reported to the Department as U.S. warranty expenses, we are continuing to use the percentage presented to us at the start of verification as the cost of ''returns'' for this expense in the final determination. (See Analysis Memo, dated October 24, 1997.)

Comment 26

Petitioners note that the Department found unreported port of entry and exit survey charges at the U.S. verification of Newco. Petitioners state that these charges are paid by Newco and passed on to the customers and they should be deducted from U.S. price as a direct selling expense. Petitioners argue that since these charges have not been included in the computer sales listing, the Department should apply facts available to this adjustment. See 19 U.S.C. 1677e and 1677m. Petitioners argue that the Department should use the highest survey rates found for any sale as identified in the Highveld's sales verification report.

Highveld notes that it has submitted a revised database including these charges and that these charges apply to CEP sales. Highveld states that these charges do not apply to EP sales. Highveld argues that the Department requested this data and the use of facts available for these charges is not appropriate.

DOC Position

We agree with respondent. It is true that the Department found unreported port of entry and exit survey charges at the U.S. verification of Newco. These charges are paid by Newco and passed on to the customers and they should be deducted from U.S. price as a direct selling expense. These charges have been included in Highveld's latest submission and we have used Highveld's submitted port of exit and entry survey charges for the final determination.

Comment 27

Petitioners claim that Highveld failed to report stevedoring and wharfage charges in its sales listing, but reported them separately. Petitioners argue that these fees must be subtracted from the CEP for the final determination, taking into account the fees that were verified (see Highveld's sales verification report).

Highveld states that it has included this information in its revised database, and that these charges should be deducted from CEP.

DOC Position

We agree with both parties and have made this change for the final determination.

Comment 28

Petitioners state that Highveld failed to report certain U.S. sales of subject merchandise (see Highveld's sales verification report, at page 31). Petitioners note that the Court of International Trade has found that the ''capture of all U.S. sales at their actual prices is at the heart of the Department's investigation,'' and that the omission of even one U.S. sales is a ''serious error.'' See Florex v. United States, 705 F. Supp. 582, 588 (CIT 1988) and Persico Pizzamiglio v. United States, 16 CIT 299 (1994). Petitioners state that these missing sales must be included in the final determination, and that if the Department does not have detailed sales data for these missing sales on the record, it must resort to facts available.

Highveld notes that there was no significant failure to report U.S. sales. Highveld states that Newco manually identified sales of subject merchandise and missed several small sales. Highveld argues that this error is minor (less than one percent of Highveld's U.S. sales) and will not distort the antidumping calculation. Highveld further argues that with one minor exception these sales are the same merchandise at the same prices as other sales analyzed by the Department and urges the Department to exclude these sales from its antidumping analysis.

DOC Position

We agree with petitioners and have included these unreported sales in our analysis for the final determination. As the Department does not have detailed, verified sales data for these missing sales on the record, it is using facts available for this portion of the final determination. We fully agree with the finding of the Court of International Trade that the ''capture of all U.S. sales at their actual prices is at the heart of the Department's investigation.'' See Florex v. United States, 705 F. Supp. 582, 588 (CIT 1988) and Persico Pizzamiglio v. United States, 16 CIT 299 (1994). It is essential that respondents fully report this information to the Department. By not providing complete information for U.S. sales when such information was available to Highveld, we have determined that Highveld failed to cooperate by not acting to the best of its ability to comply with a request for information. See Pasta. Consequently, the use of adverse facts available under section 776(b) of the Act is warranted. As adverse facts available, we are using the highest calculated non-aberational margin for individual sales of respondent in this investigation. See Analysis Memo, dated October 24, 1997.

Comment 29

Petitioners state that marine insurance on U.S. sales was incorrectly reported (see Highveld's sales verification report, at page 38). Petitioners claim that since it is not possible to understand whether this miscalculation occurred in all sales or just those verified, the Department should increase all reported marine insurance by the percentage verified as facts available.

Highveld counters that the deduction for marine insurance should not be based on facts available as the Department only found that the reported amount of marine insurance for one shipment had been under-reported by a very small amount and marine insurance was correctly reported for other transactions. Highveld states that the Department should add the corrected amount (38 cents) to marine insurance for all invoices affected by the one misreported shipment, but otherwise use Highveld's reported data.

DOC Position

We agree with Highveld and have made this correction for our final determination.

Comment 30

Petitioners claim that Highveld did not correctly report the merchandise processing fee portion of U.S. import duties. They state that the processing fees should be changed to the correct amount as verified, and the corrected USDTYU factors of 5.7359 percent and 5.135 percent should be applied to 1995 and 1996 sales respectively.

Highveld agrees that the Department should correct this error. However, Highveld states that the correct factor for 1995 is 5.735 percent.

DOC Position

We agree with both parties and have included the corrected U.S. duty amounts submitted by Highveld in its revised sales listing for the final determination.

Comment 31

Petitioners claim that the interest rate used to calculate credit expense on CEP sales through Newco is incorrect.

Petitioners state that Newco used a simple average of the applicable interest rates rather than a weighted average interest rate, and used initial rates of interest for a particular loan, regardless of whether or not the rates fluctuated (see Highveld's sales verification report, at pages 38–40). For these reasons, petitioners believe that the Department should use the highest rate reported for any loan as the interest rate applied to the credit expense calculation for all CEP sales.

Highveld claims that the Department exhaustively verified the interest rate used to calculate CEP interest expenses. While Highveld continues to argue that its methodology is reasonable, it notes that based on information on the record, the Department could construct a weighted average interest rate.

DOC Position

We agree with petitioners. The methodology used by respondent does not accurately reflect Newco's cost of borrowing. Nor does the Department have complete documentation on all interest rates where these rates fluctuated. Even if the Department did have complete information, it is not the Department's responsibility to make extensive revisions to submitted information. By not providing verifiable information for U.S. interest rates when such information was available to Highveld, we have determined that Highveld failed to cooperate by not acting to the best of its ability to comply with a request for information. See Pasta. Consequently, the use of adverse facts available under section 776(b) of the Act is warranted. As facts available the Department is recalculating Highveld's credit expenses using the highest interest rate reported for any loan for all CEP sales.

Comment 32

Petitioners state that the Department should not subtract the Regional Services Council (RSC) levy from normal value as this tax is not solely rebated or not collected on exports. (See 19 U.S.C. 1677(a)(6)(B)(iii).) Highveld indicates, according to petitioners, that this levy is placed on net sales of the company, whether or not the merchandise was sold domestically or exported to another country. Petitioners argue that if the Department continues to regard this levy as a direct selling expense, then the Department should make a circumstance of sale adjustment to add back the amount of tax collected on the U.S. sales.

Highveld responds that the deduction from normal value for the RSC levy is appropriate. Highveld argues that if the Department changes its treatment of this expense in the final determination it must ensure that this expense is treated in a neutral manner to reflect the fact that it is an expense incurred for both home market and U.S. sales.

DOC Position

We agree with petitioners. We have reviewed the RSC levy since our preliminary determination and found, as Highveld itself indicated in its April 7, 1997, submission, that this levy represents a turnover tax applied to net sales, regardless of whether the merchandise was sold for the export or local market. Since the levy is not rebated and it is collected on export sales, it does not qualify as a deduction from NV under section 773(a)(6)(B) of the Act. Therefore, for the final determination we have not adjusted NV or U.S. price for the RSC levy.

Comment 33

Petitioners state that Highveld overstated home market credit expenses (see Highveld's sales verification report, at pages 43–44). Petitioners note that Highveld reported payment dates as the last day of the month, irrespective of the actual date of payment. Petitioners state that since the Department is unable to verify the accuracy of the home market credit expense and has found inaccuracies in the reported amounts using Highveld's methodology, the Department should not adjust normal value for such a credit expense. Petitioners further state that if the Department decides to make the adjustment, it should recalculate the adjustment correctly and reduce the payment period by 30 days for all home market sales before performing the credit expense calculation.

Highveld claims that it properly reported home market credit expenses. Highveld notes that the Department found a single calculation error which was attributable to the calculation of credit expense on the invoice amount due, not including a subsequently paid rebate. Highveld states that payment can be received before or after the reported payment date. Highveld explains that customers tend to pay as late as possible, making Highveld's methodology a conservative one. Highveld reiterates that it has reported the only payment date recorded in its accounting system, and urges the Department to use its reported home market credit expense, with the single exception noted above.

DOC Position

We agree in part with petitioners. Highveld did not demonstrate at verification that its payment methodology is reflective of actual dates of payment. There is no evidence on the record to suggest that payment is only made at the end of the month. Additionally, the Department notes that even using Highveld's reported methodology there are disprepancies with Highveld's reported credit expenses and those calculated by the Department. A single example of this was described in the verification report. However, a review of verification exhibits and other reported observations in Highveld's database indicates that there were in fact pervasive discrepancies, some of which were minor. For this final determination, as facts available, the Department has calculated the actual home market credit expense for the limited number of observations for which actual date of payment information was supplied. This expense was compared to the reported expense and we calculated an average percentage difference. We have adjusted all reported home market credit expenses downward by this percentage difference.

Highveld should have developed a verifiable methodology for reporting date of payment or alternatively chosen a conservative methodology for reporting these dates. See Certain Cut-To-Length Carbon Steel Plate From Germany, 61 FR 13834, 13841 (March 28, 1996). By not providing verifiable information for home market credit expenses when such information was available to Highveld, we have determined that Highveld failed to cooperate by not acting to the best of its ability to comply with a request for information. See Pasta. Consequently, the use of adverse facts available under section 776(b) of the Act is warranted.

Comment 34

Petitioners stated that errors in the reported inland freight were discovered at verification (Highveld's sales verification report, at pages 44, 53). Petitioners explain that these errors included miscalculations and freight markups by Highveld. Petitioners contend that the Department should not adjust normal value for home market freight expenses since there are obvious flaws in the reported data. Petitioners state that if the Department does adjust normal value, it should first reduce reported freight expenses on home market sales by multiplying the correction value to account for calculation inaccuracies, as well as multiply by the correction value to account for the markup of freight charges.

Highveld counters that inland freight was not misreported. Highveld states that the Department discovered a single error in home market inland freight. With respect to markup charges, Highveld notes that these charges only apply to road haulage, not to all sales. Highveld claims that this percentage is an element of its accounting system, designed to capture actual expenses (such as miscellaneous shipping fees like waiting charges) and was not created for this investigation. Highveld urges the Department to correct the single error and otherwise use its reported home market inland foreign expenses.

DOC Position

We agree with respondents. Although petitioners are correct in noting that during verification we found an error in one of the calculated inland freight expenses, we also found instances where the expense was reported correctly. Upon review of the verification exhibits and the markup charges referred to petitioners, we agree with Highveld that these charges only apply to road haulage, and not to all sales, and that it is captured as an actual expense in its normal course of business. As a result, we are correcting the error referred to above and allowing all other home market inland freight charges as reported.

Comment 35

Petitioners note that Highveld was unable to exclude returns from its home market data. However, Highveld was able to report the refunded amount for such sales in REBATE2H field. At verification, the Department discovered that in several instances the amount reported in REBATE2H field did not comply with those of the company's record keeping system. Therefore, petitioners contend that the Department should not reduce the home market price by REBATE2H when calculating normal value. Additionally, petitioners state that for cases where the REBATE2H field approximates gross unit price, the sale should be thrown out of the data pool since a rebate that large would signify that most, if not all, of the sale had been returned or canceled.

Highveld argues that REBATE2H should be granted in the calculation of normal value. Highveld states that where the amounts of the rebate approximate gross unit price, the amounts were reported as negatives and the sale was effectively netted out. With respect to petitioners' claim that this rebate was misreported, Highveld acknowledges that there were a few discrepancies related to canceled sales, but states that the Department verified that the amounts otherwise reported for this rebate were accurate. Highveld urges the Department to use Highveld's reported data for this variable for the final determination, but agrees that the Department may exclude those sales where the amounts of REBATE2H approximate gross unit price.

DOC Position

We agree with both parties that we should exclude for the final determination those home market sales where the amounts of REBATE2H approximate gross unit price. We note that the discrepancies found by the Department at verification pertain to these sales that we are excluding. Consequently, we do not agree with petitioners' argument that this rebate should be disallowed for other home market sales.

Comment 36

Petitioners note that the Department found errors in the tonnages used to calculate the data reported in the REBATE8H field (Highveld's sales verification report, at page 51). Petitioners state that since the Department could not verify the accuracy of REBATE8H, it should not be used as an adjustment to normal value. However, petitioners state that the Department should use the reported REBATE8H as a deduction to price when doing the cost/price comparison.

Highveld argues that the Department should not deny it an adjustment for this rebate. Highveld claims that the tonnage discrepancy was insignificant. Highveld explains that the reason for this difference was that the tonnage used in the calculation of this rebate was based on the original sales submission, prior to the exclusion of certain sales at the request of the Department.

DOC Position

We agree with respondent. We determined that the methodology used to calculate the per customer amounts of the rebate was reasonable. As described in the sales verification report, the discrepancy identified was small, and there is no evidence that it affected the calculation of this rebate. Therefore, for the final determination we are allowing the reported amounts for REBATE8H as adjustments to NV.

Comment 37

Petitioners contend that the Department should use facts available for all handling and brokerage charges on U.S. sales. Petitioners note that verifiers found that stevedoring and total handling and brokerage was understated. Petitioners explain that verifiers also discovered that the shipping rates reported by Highveld were inaccurate (Highveld's sales verification report, at page 54). Petitioners state that the highest reported rate for any sale for each charge should be used to calculate the adjustment as facts available.

Highveld maintains that handling and brokerage charges on U.S. sales were properly calculated. Highveld claims that the discrepancies identified at verification apply only to specific shipments, not to all shipments. Highveld notes that the discrepancy amounts to less than a rand per ton and that argues that the Department should make the corrections described in the verification report, and otherwise use Highveld's reported handling and brokerage charges.

DOC Position

We agree with both petitioners and respondent in part. For the final determination we are using the reported and brokerage and handling expenses for one shipment involving certain sales which we found at verification to be correct. For a second shipment, we are correcting the expenses reported for certain sales which we found at verification involved only minor corrections (see Highveld's sales verification report, at pages 53–54). For a third shipment we examined, we found extensive inaccuracies. Because we are unable to determine the full extent of the other inaccuracies found for other shipments, we are applying the highest reported brokerage and handling expense for any U.S. sale to this third shipment and the remaining U.S. shipments. See Analysis Memo, dated October 24, 1997. By not providing verifiable information for brokerage and handling expenses when such information was available to Highveld, we have determined that Highveld failed to cooperate by not acting to the best of its ability to comply with a request for information. See Pasta. Consequently, the use of adverse facts available under section 776(b) of the Act is warranted.

Comment 38

Petitioners contend that the Department should use facts available for U.S. credit expenses because verifiers found that the U.S. sales trace's credit expense was understated (Highveld's sales verification report, at page 57).

Highveld claims that its U.S. credit expenses were properly calculated.

Highveld acknowledges that credit expenses were understated for one U.S. EP sale, but argues that there is no evidence that credit expenses for other U.S. sales were misreported. Highveld states that the Department should correct the single error discovered at verification, but otherwise use Highveld's reported data.

DOC Position

We disagree with both petitioners and respondent. For the two EP sales examined at verification, one overstated U.S. credit expense and the other sale understated this expense; on average Highveld has overstated these expenses. Consequently, for this final determination we are revising reported credit expense for these two sales and are otherwise using the reported credit expenses.

Comment 39

Petitioners claim that Highveld did not report accurate data for its home market and U.S. packing expenses (Highveld's sales verification report, at pages 62–63). According to petitioners, packing materials costs were not quantified, no accurate information on labor and overhead was supplied, and all figures were based on estimates provided by management of the company. Petitioners cite 19 U.S.C. 1677m(i) and state that the estimates of the management cannot be empirically tested and thus, the data is unverified. Petitioners also cite 19 U.S.C. 1677e that states that since the necessary information is not on the record or cannot be verified, the Department should use facts available. Petitioners suggest that as facts available, the Department did not adjust the normal value for home market packing and create a U.S. packing expense by inflating the packing material cost reported for U.S. sales by the average ratio of all transformation and overhead costs to all material costs.

Highveld claims that its packing expenses were calculated in a reasonable manner. Highveld states that its accounting system does not account for separate expense categories under packaging material. Highveld states that it provided a reasonable estimate of packing materials cost and the Department should use this information rather than resort to facts available for the final determination.

DOC Position

We agree with petitioners. At verification we found that Highveld was unable to provide an explanation for the estimated and average costs used to calculate home market and U.S. packing expenses. Neither was it able to provide any documentation to support its claimed expenses. Because we were unable to verify this estimated information, we are denying home market packing expenses as an adjustment to NV.

Comment 40

Petitioners argue that Highveld is not entitled to a deduction from normal value for the RSPCC levy. In petitioners' view, this payment is essentially a payment of dues to a voluntary organization. Petitioners argue that this levy is not a tax, and that the only provision under which this adjustment could be made would be as a circumstances of sale adjustment. However, petitioners claim, it would not be appropriate to make a circumstances of sale adjustment for this levy as adjustments under this provision are limited to expenses that are *bona fide* circumstances of sale and bear a direct relationship to the sale. Petitioners note that with respect to credit, warranties or technical assistance the seller is conveying to the purchase something of value. See Certain Welded Carbon Steel Pipe and Tubes from India, 56 FR 64753, 64757 (December 12, 1991); see also Mantex v. United States, 841 F. Supp 1290, 1302–3 (CIT 1993). Petitioners argue that the RSPCC levy does not convey any value to the purchaser of the steel product, and that the levy is not a function of the buyer-seller relationship at all, but is a function of the relationship between the seller and the South African Steel Association. Petitioners claim that the levy is neither a circumstance of the sale nor directly related to the sale, and question the existence of any evidence of a causal link between the levy and home market prices.

Highveld maintains that it is entitled to a deduction from normal value for the RSPCC payment as a direct selling expense. Highveld argues that this payment is directly related to sales as the amount of the payment is calculated based on the value of local sales. While admitting that payment of the RSPCC is voluntary, Highveld states that it benefits from the RSPCC payment in the form of increased home market steel sales and that steel purchasers also receive benefits from RSPCC programs. Highveld claims that this payment does bear a causal relationship to the sale as Highveld would not make the payment in the absence of home market sales. Highveld maintains that it is not necessary to demonstrate a causal effect on prices for the Department to accept a direct selling expense and that there is a presumption that the customer is absorbing the cost of the payment as part of the total price of the steel.

DOC Position

We agree with petitioners. As Highveld's sales verification report and exhibit 24 indicate, the RSPCC levy is assessed as a fee based on the quantity of sales. The amount of the levy is paid monthly to a fund to which Highveld voluntarily is a member. The purpose of the fund is to promote the export sales of steel produced in the local market. Highveld claims that it gains benefits from belonging to the fund by way of increased home market sales. However, even if these claims are true, we do not consider this evidence of the value gained by purchasers of products subject to this investigation. As petitioners correctly point out, the RSCPP levy appears to represent a function of the relationship between Highveld and the organization to which the levy payments are made, rather than of the relationship between Highveld and purchasers of subject merchandise. We do not believe this to be a characteristic of a direct selling expense. Therefore, for purposes of the final determination, we have not deducted Highveld's home market payments of the levy from NV.

Comment 41

Petitioners claim that the Department made a clerical error in the preliminary determination regarding the calculation of CEP. According to petitioners, the Department intended to deduct indirect selling expenses incurred in South Africa converted from rand to U.S. dollars, but did not do so.

Highveld takes issue with petitioners suggestion. Highveld rejects the argument that the Department should deduct expenses from normal value after conversion into a dollar amount. Highveld also rejects the argument that indirect selling expenses incurred in the home market should be deducted from CEP. Highveld notes that the Department only deducts from CEP those indirect selling expenses associated with a sale to an unaffiliated customer in the United States. Highveld states that the expenses at issue were incurred for activities performed exclusively in South Africa, are general in nature, and are incurred for all export sales. Because these expenses do not specifically relate to U.S. commercial activity, Highveld claims they were properly not deducted. See Calcium Aluminate Flux From France: Preliminary Results of Antidumping Duty Administrative Review, 61 FR 40396, 40397 (August 2, 1996). Highveld adds that to the extent that

some portion of these general expenses might be broadly attributable to U.S. sales, they would only relate to the sale by Highveld to Newco and are, therefore, not expenses attributable to the sale to the unaffiliated purchaser.

DOC Position

We agree with respondents. The Department only deducts indirect selling expenses incurred in the country of manufacture which are specifically related to commercial activity in the United States. (See Calcium Aluminate Flux From France: Preliminary Results of Antidumping Duty Administrative Review, 61 FR 40396, 40397 (August 2, 1996).) At verification, we found that the expenses at issue were general in nature and did not relate specifically to U.S. commercial activity. Therefore, consistent with our preliminary determination, we did not deduct these expenses from CEP for the final determination.

Suspension of Liquidation

On October 24, 1997, the Department signed a suspension agreement with Iscor and Highveld suspending this investigation. Pursuant to section 734(f)(2)(A) of the Act, we are instructing Customs to terminate the suspension of liquidation of all entries of cut-to-length carbon steel plate from South Africa. Any cash deposits of entries of cut-to-length carbon steel plate from South Africa shall be refunded and any bonds shall be released.

On October 14, 1997, we received a request from petitioners requesting that we continue the investigation. We received a separate request for continuation from the United Steelworkers of America, an interested party under section 771(9)(D) of the Act on October 15, 1997. Pursuant to these requests, we have continued and completed the investigation in accordance with section 734(g) of Act. We have found the following margins of dumping:

Manufacturer/producer/exporter	Weight-average margin percentage
Highveld	26.01
Iscor	50.87
All Other	38.36

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated (see section 734(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue an antidumping duty order as long as the suspension agreement remains in force (see section 734(f)(3)(B) of the Act).

This determination is published pursuant to section 735(d) of the Act.

Dated: October 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30389 Filed 11–18–97; 8:45 am]

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DEPARTMENT OF COMMERCE

[A–791–804]

Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate From South Africa

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

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping duty investigation involving certain cut-to-length carbon steel plate (CTL plate) from South Africa. The basis for this action is an agreement between the Department and Iscor Ltd. (Iscor) and Highveld Steel and Vanadium Corporation Ltd. (Highveld) to revise their prices to eliminate completely sales of this merchandise to the United States at less than fair value.

EFFECTIVE DATE: October 24, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Rast, Nancy Decker, or Linda Ludwig, Office of AD/CVD Enforcement III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue N.W., Washington, D.C. 20230; telephone (202) 482–5811, (202) 482–0196, or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1996, the Department initiated an antidumping investigation under section 732 of the Tariff Act of 1930, (the Act), as amended, to determine whether imports of CTL plate from South Africa are being or are likely to be sold in the United States at less than fair value (61 FR 64051 (December 3, 1996)). On December 19, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination (see ITC Investigation Nos. 731–TA–753–756). On June 2, 1996, the Department preliminarily determined that CTL plate is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (62 FR 31967 (June 11, 1997)).

The Department and Iscor and Highveld initialed a proposed agreement suspending this investigation on September 25, 1997. On September 26, 1997, we invited interested parties to provide written comments on the agreement and received comments from Geneva Steel, Gulf States Steel, Iscor and Highveld.

The Department and Iscor and Highveld signed the final suspension agreement on October 24, 1997.

Scope of Investigation

See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, signed October 24, 1997.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with Section 734(b) of the Act, we have determined that the agreement will completely eliminate sales at less than fair value, that the agreement is in the public interest, and that the agreement can be monitored effectively. See Public Interest Memorandum, October 24, 1997. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(b) of the Act have been met. The terms and conditions of this agreement, signed October 24, 1997, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries of cut-to-length carbon steel plate from South Africa entered or withdrawn from warehouse, for consumption, as directed in our Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cut-to-Length Carbon Steel Plate From South Africa is hereby terminated. Any cash deposits on entries of cut-to-length carbon steel plate from South Africa pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

On October 14, 1997 we received a request from petitioners requesting that

we continue the investigation. We received separate requests from the United Steelworkers of America, Bethlehem Steel Corp., and U.S. Steel Corp. (a unit of USX Corporation), interested parties under section 771(9)(D) of the Act. Pursuant to these requests, we have completed the investigation in accordance with section 734(g) of the Act, and have notified the International Trade Commission (ITC) of our determination. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated (*see* section 734(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue an antidumping duty order as long as the suspension agreement remains in force (*see* section 734(f)(3)(B) of the Act).

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: November 7, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix 1—Suspension Agreement Cut-to-Length Carbon Steel Plate From the Republic South Africa

Under section 734(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(b)) (the Act), and 19 CFR 353.18, the U.S. Department of Commerce (the Department) and the signatory producers/exporters of cut-to-length carbon steel plate from the Republic of South Africa enter into this suspension agreement (the Agreement). On the basis of this suspension agreement, the Department shall suspend its antidumping investigation initiated on December 3, 1996 (61 FR 64051), with respect to cut-to-length carbon steel plate from the Republic of South Africa, subject to the terms and provisions forth below.

(A) Product Coverage

The merchandise subject to this Agreement is the following merchandise which has the Republic of South Africa as its origin:

(1) For purposes of the Agreement, cut-to-length carbon steel plate includes hot-rolled iron and non-alloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness.

(2) Included as subject merchandise in this Agreement are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from subject merchandise within the scope of this agreement is grade X–70 plate. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this Agreement is dispositive.

(B) U.S. Import Coverage

The signatory producers/exporters collectively are the producers and exporters in the Republic of South Africa that, during the antidumping investigation on the merchandise subject to the Agreement, accounted for substantially all (not less than 85 percent) of the subject merchandise imported into the United States, as provided in the Department's regulations. The Department may at any time during the period of the Agreement require additional producers/exporters in the Republic of South Africa to sign the Agreement in order to ensure that not less than substantially all imports into the United States are covered by the Agreement.

In reviewing the operation of the Agreement for the purpose of determining whether this Agreement has been violated or is no longer in the public interest, the Department will consider imports into the United States from all sources of the merchandise described in Section A of the Agreement. For this purpose, the Department will consider factors including, but not limited to, the following: volume of trade, pattern of trade, whether or not the reseller is an original equipment manufacturer, and the reseller's export price (EP).

(C) Basis of the Agreement

On and after the effective date of the Agreement, each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (NV) of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement. For this purpose, the Department will determine the NV in accordance with section 773(e) of the Act and U.S. price in accordance with section 772 of the Act.

(1) For all sales occurring on and after the effective date of the Agreement through March 31, 1998 (interim period), each signatory producer/exporter agrees not to sell its merchandise subject to the Agreement to unaffiliated purchasers in the United States at prices that are less than its NV, as determined by the Department, and provided to parties not later than November 7, 1997; and

(2) For all sales occurring on and after April 1, 1998, each producer/exporter agrees not to sell its merchandise subject to the Agreement to any unaffiliated purchaser in the United States at prices that are less than the NV of the merchandise, as determined by the Department on the basis of information submitted to the Department not later than the dates specified in section D of the Agreement and provided to parties not later than December 10, March 10, June 10, and September 10 of each year. This NV shall apply to sales occurring during the fiscal quarter beginning on the first day of the month following the date the Department provides the NV, as stated in this paragraph.

(D) Monitoring

Each signatory producer/exporter will supply to the Department all information that the Department decides is necessary to ensure that the producer/exporter is in full compliance with the terms of the Agreement. As explained below, the Department will provide each signatory producer/exporter a detailed request for information and prescribe a required format and method of data compilation, not later than the beginning of each reporting period.

(1) Sales Information

The Department will require each producer/exporter to report, on computer tape in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to the Agreement, either directly or indirectly to unaffiliated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

The first report of sales data shall be submitted to the Department, on computer tape in the prescribed format and using the prescribed method of data compilation, not later than January 31, 1998, and shall contain the specified sales information covering the period October 24, 1997, to December 31, 1997. Subsequent reports of sales data shall be submitted to the Department not later than January 31, April 30, July 31, and October 31 of each year, and each report shall contain the specified sales information for the quarterly period ending one month prior to the due date, except that if the Department receives information that a possible violation of the Agreement may have occurred, the Department may request sales data on a monthly, rather than quarterly basis.

(2) Cost Information

Producer/exporters must request NVs for all subject merchandise that will be sold in the United States. For those products which the producer/exporter is requesting NVs, the Department will require each producer/exporter to report: their actual cost of manufacturing; selling, general and administrative (SG&A) expenses; and profit data on a quarterly basis, in the prescribed format and using the prescribed method of data compilation. As indicated in Appendix B, profit will be reported by the producers/exporters on a quarterly basis. Each such producer/exporter also must report anticipated increases in production costs and may report anticipated decreases in production costs in the quarter in which the information is submitted resulting from factors such as anticipated changes in

production yield, changes in production process, changes in production quantities or changes in production facilities.

The first report of cost data for the post-interim period shall be submitted to the Department not later than January 20, 1998, and shall contain the specified cost data covering the period October 1, 1997, through December 31, 1997. Each subsequent report shall be submitted to the Department not later than January 20, April 20, July 20, and October 20 of each year, and each report shall contain specified information for the quarter ending one month prior to the due date.

(3) Special Adjustment of Normal Value

If the Department determines that the NV it determined for a previous quarter was erroneous because the reported costs for that period were inaccurate or incomplete, or for any other reason, the Department may adjust NV in a subsequent period or periods, unless the Department determines that Section F of the Agreement applies.

(4) Verification

Each producer/exporter agrees to permit full verification of all cost and sales information semi-annually, or more frequently, as the Department deems necessary.

(5) Bundling or Other Arrangements

Producers/exporters agree not to circumvent the Agreement. In accordance with the date set forth in Section D(1) of the Agreement, producers/exporters will submit a written statement to the Department certifying that the sales reported herein were not, or are not part of or related to, any bundling arrangement, on-site processing arrangement, discounts/free goods/financing package, swap or other exchange where such arrangement is designed to circumvent the basis of the Agreement.

Where there is reason to believe that such an arrangement does circumvent the basis of the Agreement, the Department will request producers/exporters to provide within 15 days all particulars regarding any such arrangement, including, but not limited to, sales information pertaining to covered and non-covered merchandise that is manufactured or sold by producers/exporters. The Department will accept written comments, not to exceed 30 pages, from all parties no later than 15 days after the date of receipt of such producer/exporter information.

If the Department, after reviewing all submissions, determines that such arrangement circumvents the basis of the Agreement, it may, as it deems most appropriate, utilize one of two options: (1) the amount of the effective price discount resulting from such arrangement shall be reflected in the NV in accordance with Section D(3), or (2) the Department shall determine that the Agreement has been violated and take action according to the provisions under Section F.

(6) Rejection of Submissions

The Department may reject any information submitted after the deadlines set forth in this section or any information which it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may calculate normal value, NV, and/or U.S. price based on facts otherwise available, as it determines appropriate, unless the Department determines that Section F applies.

(E) Disclosure and Comment

(1) The Department may make available to representatives of each domestic party to the proceeding, under appropriately drawn administrative protective orders, business proprietary information submitted to the Department during reporting period as well as the results of its analysis under section 773 of the Act.

(2) Not later than February 20, May 20, August 20, and November 20 of each year, the Department will disclose to each producer/exporter the results and the methodology of the Department's calculations of its NV. At that time, the Department may also make available such information to the domestic parties to the proceeding, in accordance with this section.

(3) Not later than 7 days after the date of disclosure under paragraph E(2), the parties to the proceeding may submit written comments to the Department, not to exceed 15 pages. After reviewing these submissions, the Department will provide to each producer/exporter its NV as provided in paragraph C(2). In addition, the Department may provide such information to domestic interested parties as specified in this section.

(F) Violations of the Agreement

If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 734(b) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the regulations. In the event that the Department determines that the investigation shall be resumed, it will be resumed on the basis of the original administrative record, and the statutes, regulations, policies, and practices in effect on the effective date of the Agreement.

(G) Other Provision

In entering into the Agreement, the signatory producers/exporters do not admit that any sales of the merchandise subject to the Agreement have been made at less than fair value.

(H) Termination

The Department will not consider requests for termination of this suspended investigation prior to October 2002. Termination will be conducted in accordance with section 351.222 of the Department's regulations.

Any producer/exporter may terminate the Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

(I) Definitions

For purposes of the Agreement, the following definitions apply:

(1) U.S. PRICE—means the export price or constructed export price at which merchandise is sold by the producer or exporter to the first unaffiliated person in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustments affecting the net amount paid or to be paid by the unaffiliated purchaser, as determined by the Department under section 772 of the Act.

(2) NORMAL VALUE—means the constructed value (CV) of the merchandise, as determined by the Department under section 773 of the Act and the corresponding sections of the Department's regulations, and as adjusted in accordance with Appendix A to this Agreement.

(3) PRODUCER/EXPORTER—means (1) the foreign manufacturer or producer, (2) the foreign producer or reseller which also exports, and (3) the affiliated person by whom or for whose account the merchandise is imported into the United States, as defined in section 771(28) of the Act.

(4) DATE OF SALE—means normally the date of the invoice as recorded in the exporter or producer's records kept in the ordinary course of business, unless the Department determines that a different date better reflects the date on which the exporter or producer establishes the material terms of sale, as determined by the Department under its regulations.

The effective date of the Agreement is October 24, 1997.

For the Republic of South African Producers/Exporters

Iscor Ltd.

_____

Marcela B. Stras, Esq., Adduci, Mastriani & Schaumberg, LLP

_____

Date

Highveld Steel and Vanadium Corp. Ltd.

_____

Jeff Chegwidden, Director & General Manager Marketing

_____

Date

For U.S. Department of Commerce

_____

Robert S. LaRussa, Assistant Secretary for Import Administration

_____

Date

Appendix A—Cut-to-Length Carbon Steel Plate From the Republic of South Africa Principles of Cost

General Framework

The cost information reported to the Department that will form the basis of the NV calculations for purposes of the Agreement must be:

- Comprehensive in nature and based on a reliable accounting system (i.e., a system based on well-established standards that can be tied to the audited financial statements);
- Representative of the company's costs incurred for the general class of merchandise;
- Calculated on a quarterly weighted-average basis of the plants or cost centers manufacturing the product;
- Based on fully-absorbed costs of production, including any downtime;

• Valued in accordance with generally accepted accounting principles;
• Reflective of appropriately allocated common costs so that the costs necessary for the manufacturing of the product are not absorbed by other products; and
• Reflective of the actual cost of producing the product.

Additionally, a single figure should be reported for each cost component.

Cost of Manufacturing (COM)

Costs of manufacturing are reported by major cost category and for major stages of production. Weighted-average costs are used for a product that is produced at more than one facility, based on the cost at each facility.

Direct materials—cost of those materials which are input into the production process and physically become part of the final product.

Direct labor—cost identified with a specific product. These costs are not allocated among products except when two or more products are produced at the same cost center. Direct labor costs should include salary, bonus and overtime pay, training expenses, and all fringe benefits. Any contracted-labor expense should reflect the actual billed cost or the actual costs incurred by the subcontractor when the corporation has influence over the contractor.

Factory overhead—overhead costs include indirect materials, indirect labor, depreciation, and other fixed and variable expenses attributable to a production line or factory. Because overhead costs are typically incurred for an entire production line, an appropriate portion of those costs must be allocated to covered products, as well as any other products produced on that line. Acceptable cost allocations can be based on labor hours or machine hours. Overhead costs should also reflect any idle or downtime and be fully absorbed by the products.

Cost of Production (COP)

Is equal to the sum of materials, labor, and overhead (COM) plus SG&A expenses in the home market (HM).

SG&A—those expenses incurred for the operation of the corporation as a whole and not directly related to the manufacture of a particular product. They include corporate general and administrative expenses, financing expenses, and general research and development expenses. Additionally, direct and indirect selling expenses incurred in the HM for sales of the product under investigation are included. Such expenses are allocated over cost of goods sold.

Constructed Value

Is equal to the sum of materials, labor and overhead (COM) and SG&A expenses plus profit in the comparison market and the cost of packing for exportation to the United States.

Calculation of Suspension Agreement NVs

NVs (for purposes of the Agreement) are calculated by adjusting the CV and are provided for both EP and CEP transactions. In effect, any expenses uniquely associated with the covered products sold in the HM are subtracted from the CV, and any such expenses which are uniquely associated with the covered products sold in the United States are added to the CV to calculate the NV.

Export Price—Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before the goods are imported into the United States. In cases where the foreign manufacturer knows or has reason to believe that the merchandise is ultimately destined for the United States, the manufacturer's sale is the sale subject to review. If, on the other hand, the manufacturer sold the merchandise to a foreign trader without knowledge of the trader's intention to export the merchandise to the United States, then the trader's first sale to an unaffiliated person is the sale subject to review. For EP NVs, the CV is adjusted for movement costs and differences in direct selling expenses such as commissions, credit, warranties, technical services, advertising, and sales promotion.

Constructed Export Price—Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation, unless the U.S. affiliate performs only clerical functions in connection with the sale. For CEP NVs, the CV is adjusted similar to EP sales, with differences for adjustment to U.S. and HM indirect-selling expenses.

Home market direct-selling expenses—expenses that are incurred as a direct result of a sale. These include such expenses as commissions, advertising, discounts and rebates, credit, warranty expenses, freight costs, etc. Certain direct-selling expenses are treated individually. They include:

commission expenses—payments to unaffiliated parties for sales in the HM.
credit expenses—expenses incurred for the extension of credit to HM customers.
movement expenses—freight, brokerage and handling, and insurance expenses.

U.S. direct-selling expenses—the same as HM direct-selling expenses except that they are incurred for sales in the United States.

Movement expenses—additional expenses incidental to importation into the United States. These typically include U.S. inland freight, insurance, brokerage and handling expenses, U.S. Customs duties, and international freight.

U.S. indirect-selling expenses—include general fixed expenses incurred by the U.S. sales subsidiary or affiliated exporter for sales to the United States. They may also include a portion of indirect expenses incurred in the HM for export sales.

FOR EP TRANSACTIONS

+	direct materials
+	direct labor
+	*factory overhead*
=	Cost of Manufacturing
+	*home market SG&A*
=	Cost of Production
+	U.S. packing
+	*Profit*
=	Constructed Value
+	U.S. direct selling expense
+	U.S. commission expense
+	U.S. movement expense
+	U.S. credit expense
−	HM direct selling expense
−	HM commission expense [1]
−	*HM credit expense*
=	NV for EP sales

[1] If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. commissions.

FOR CEP TRANSACTIONS

+	direct materials
+	direct labor
+	*factory overhead*
=	Cost of Manufacturing
+	*home market SG&A*
=	Cost of Production
+	U.S. packing
+	*profit*
=	Constructed Value
+	U.S. direct selling expense
+	U.S. indirect selling expense
+	U.S. commission expense
+	U.S. movement expense
+	U.S. credit expense
+	U.S. further manufacturing expenses (if any)
+	CEP profit
−	HM direct selling expense
−	HM commission expense
−	*HM credit expense*
=	NV for CEP sales

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–808]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine

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

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan at (202) 482–1324 or Eugenia Chu at (202) 482–3964, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

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 19 CFR part 353 (1997).

Final Determination: We determine that certain cut-to-length steel plate (CTL plate) from Ukraine is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

Since the preliminary determination in this investigation (*Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 31958 (June 11, 1997), the following events have occurred:

In June 1997, we verified the respondent's questionnaire responses. On July 23, 1997, the Department issued its report on verification findings. Petitioners and Respondent submitted case briefs on August 22, 1997, and rebuttal briefs on August 29, 1997. A public hearing was neither requested nor held.

On July 28, 1997, the Department provided interested parties the opportunity to submit additional publicly-available information (PAI) from surrogate countries to value certain factors of production. The Department received responses on August 18, 1997, and comments on August 25, 1997.

Scope of Investigation

The products covered by this investigation are hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from the subject merchandise within the scope of the petition is grade X–70 plate. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive. *See* memorandum on *Scope of Investigations on Carbon Steel Plate*, from Joseph Spetrini to Robert S. LaRussa (October 24, 1997).

Period of Investigation (POI)

The POI is April 1, 1996 through September 30, 1996.

Nonmarket Economy Status

In accordance with section 773(c) of the Act, the Department normally uses a factor valuation methodology to calculate normal value when the country involved is an NME country and the Department determines that it cannot determine normal value based on the respondent's prices or costs. In this investigation, the Government of Ukraine claims that economic conditions now prevalent throughout Ukraine warrant revocation of Ukraine's NME-country status.

Regarding the revocation of NME status, the Department's analysis centers around the government's role in economic activity. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Poland* (58 FR 37205, July 9, 1993). In accordance with section 771(18)(B) of the Act, in considering a country's status, the Department analyzes the extent to which resources are allocated by the market or government, taking into account government involvement in currency and labor markets, pricing, and production and investment decisions. Where resources are not allocated by the market, the Department cannot conclude that home market prices or costs should be used to calculate normal value.

As discussed in detail in our Memorandum on Separate Rates (dated June 3, 1997), since 1991 the Government of Ukraine has undertaken significant market reforms and passed extensive legislation toward the development of an economy which can operate based upon free market principles. However, in applying the factors required under section 771(18)(B) of the Act, we have found that Ukraine's economy, while in transition, does not yet qualify as a market economy under the antidumping law. Therefore, we have determined that Ukraine remains an NME within the meaning of the antidumping statute.

Section 771(18)(B)(i) of the Act instructs the Department to take into account the extent to which the currency of Ukraine is convertible into the currencies of other countries. Ukraine introduced a new currency, the hryvnia, in August of 1996, which has remained quite stable against the dollar and other currencies. While the hyrvnia is traded with the Newly Independent States, it is not yet convertible elsewhere. Additionally, the Government of Ukraine retains control over the influx of foreign currency into its domestic economy by requiring that 50% of foreign export earnings be converted to hryvnias through an Interbank Currency Exchange set up by the Government of Ukraine for this purpose. *See Law On A System of Currency Regulation* (August 1993).

Pursuant to section 771(18)(B)(ii) of the Act, the Department also considers the extent to which wage rates in the foreign country are determined by free bargaining between labor and management. Although under the *Law on Enterprises in Ukraine* a collective bargaining agreement between management and workers is obligatory, it appears that with regard to wage rates and employment the government continues to be heavily involved. For example, Ukraine's Tariff Rate System grades all jobs and sets salaries based upon the level of complexity and workers' qualifications, and the Ministry of Labor establishes job position criteria through job evaluation catalogs. *See Law On Remuneration on Labor* (March 1995). All state-owned enterprises must base their wage and hiring decisions on this system. Non-state-owned enterprises must compile their own job classification and wage rates to reflect the government's system. The government also regulates where and in what manner workers are paid and provides for criminal penalties for violations by employers. *Id.*

Section 771(18)(B)(iii) directs the Department to examine the extent to

which joint ventures or other investments by foreign firms are permitted in Ukraine. As a general matter, Ukraine is open to foreign investment and the necessary supporting legislation is in place. Under Ukraine's Foreign Investment Law of 1996, its fourth foreign investment law, registered foreign investors are guaranteed equal treatment with local companies. The law also provides certain protections, including general guarantees against expropriation, unhindered transfer of profits and post-tax revenues, and a ten-year guarantee against changes in legislation that affect these basic protections. In 1996, Ukraine also added new laws and regulations on energy and mining investment and taxation of goods and services imported by foreign investors. The U.S.-Ukraine Bilateral Investment Treaty, which took effect on November 16, 1996, provides further protection for U.S. investors; other such treaties exist with, among others, Canada, France, Germany, and Italy. Finally, Ukraine is a member of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, and has enacted an international commercial arbitration law. However, areas of concern remain for foreign investors, in particular the reportedly burdensome and unpredictable arbitration and enforcement system, and the prohibition, contained in the Land Code of 1992, on foreigners owning land in Ukraine.

With regard to the extent of government ownership or control of the means of production, a factor considered under section 771(18)(B)(iv), record evidence demonstrates that the Government of Ukraine has made significant progress in privatizing state-owned business enterprises. However, privatization has proceeded unevenly thus far, with relatively rapid results in small-scale privatization and a slower pace for large-scale privatization, and much of the economy remains in the hands of the government. Notably, Ukraine has designated thousands of companies in sectors such as energy, communications, metallurgy, defense industries, and chemicals as ''strategic'' enterprises and therefore not eligible for privatization. These firms include most of Ukraine's largest companies and those with the greatest export potential. In addition, foreign investors can participate in the privatization process only through financial intermediaries (i.e., foreigners cannot acquire privatization certificates directly).

Finally, in the case of the respondents in this investigation, their status as privately-held companies is incomplete. Although respondents both qualify as ''joint stock companies,'' the majority of their shares are still owned by the government, which has yet to sell its shares in either company, either through auction, public tender, or other market mechanisms. Therefore, even though the Government of Ukraine's submissions indicate that in 1995 and 1996, 34% and 44% respectively of state-owned enterprises were privatized, it is unclear whether those figures reflect 100 percent privatization of the enterprises in question, or some continued level of government ownership, as is the case with Azovstal and Ilyich.

Pursuant to section 771(18)(v), the Department must also address the extent of government control over the allocation of resources and over output and pricing decisions of enterprises. Even with the process of privatization continuing, the Government of Ukraine still retains significant control over the means of production and in allocating resources regarding all state-owned business enterprises, as well as those enterprises leasing state-owned enterprises. Under Ukraine's *Law on Enterprises*, state-owned enterprises, or enterprises leasing state-owned enterprises, are required to fill state orders at the request of the government. Moreover, enterprises which the Government of Ukraine deems monopolies are also required to fulfill state orders, regardless of their form of ownership. *See Law On Supply of Production For State Needs.*

The government also continues to set domestic prices in some areas of the economy. According to the *Law on Prices*, the government has authority to set prices on products which affect the entire economy, to set domestic prices of monopolies, and to render to the government any monopoly profits deemed excessive. Generally, the government will deem an enterprise a monopoly where its commodity has 35 percent of the domestic market share. *See On Restricting Monopoly and Preventing Unfair Competition.*

As the above analysis indicates, the Ukrainian government has put into action a serious program of economic reform, particularly since July 1994. While significant progress has been made in Ukraine's transformation to a market economy, under the analysis required by section 771(18)(B) of the Act, we cannot conclude that Ukraine should be treated as a market economy for purposes of the antidumping duty law. While many of the state controls have been abandoned, functioning markets have not completely replaced government controls. Because the evidence does not demonstrate that prices and costs in Ukraine adequately reflect market considerations, we cannot at this time alter Ukraine's designation as a nonmarket economy under the antidumping law.

Fair Value Comparisons

To determine whether certain carbon steel plate from Ukraine sold to the United States by the Ukrainian exporters receiving separate rates were made at less than fair value, we compared the EP to the NV, as specified in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

For Azovstal and Ilyich, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the factors of production.

We corrected the respondent's data for errors and minor omissions submitted to the Department and found at verification. We calculated EP in accordance with our preliminary calculations.

Normal Value

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market economy country and that are significant producers of comparable merchandise.

In our preliminary determination, we selected Brazil as our surrogate country. Brazil is an appropriate country for the reasons set forth in our preliminary determination. *See* the January 27, 1997 memorandum from the Office of Policy discussing our selection of surrogate countries for Ukraine (*Policy Memo*). Since we find no compelling reason to change this selection (see below for comments and further analysis), we have continued to base FMV on the values of the factors of production as valued in Brazil.

Factors of Production

We calculated NV based on factors of production cited in the preliminary determination, making adjustments for specific verification findings. To calculate NV, the verified amounts for the factors of production were multiplied by the appropriate surrogate

value for the different inputs. We have used the same surrogate sources as in the preliminary determination with the exception of 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 CST's and Usiminas' financial statements that was placed on the record of this investigation by Respondents. *See* Comment 7, below.

Critical Circumstances

The Department has continued to find that critical circumstances exist for cut-to-length carbon steel plate by all Ukrainian exporters.

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.

Separate Rates

Comment 1: Separate Rates

Petitioners oppose the Department's granting of separate rates to Respondents. Petitioners argue that the Department should calculate and apply a single country-wide rate because Respondents' exports of subject merchandise from Ukraine were subject to *de jure* and *de facto* government controls, including minimum price and registration requirements, during the POI. At verification, Petitioners argue, the Department found that the companies were required to register contracts in order to control prices to avoid dumping. Also, Petitioners state that the Department found that export contracts over $3.5 million are subject to government approval and that minimum pricing is mandatory.

Petitioners argue that the inconsistencies between the governmental Decrees requiring registration and a government official's representation that registration is unnecessary until antidumping proceedings have been initiated led the Department to conclude that registration is for monitoring purposes only. However, Petitioners claim that based on a straight reading of the laws, registration is necessary for purposes of administering the minimum price requirements and other actions controlling exports. Petitioners argue that this requirement is part of a larger Ukrainian regime controlling export activities, including the setting of minimum prices.

Petitioners stress that the Government of Ukraine publishes ''indicative prices'' pursuant to a February 10, 1996 Presidential Decree but that the Department inappropriately concluded that the decree did not apply to subject merchandise exported during the POI. Petitioners contend that the categories are not exhaustive and include goods where ''special regimes'' are applied. Petitioners argue that this appears to give the government very broad legal control over setting prices since the term is not defined or explained. Petitioners contend that the Department should imply that investigations of subject merchandise fit within the category of ''special regime'.

Furthermore, Petitioners interpret the February 24, 1996 Ministry of Foreign Economic Relations and Trade (MFERT) Order to mean that the export controls are applied not only after an antidumping investigation has been initiated, but also to prevent the initiation of such an investigation. Petitioners point out that the MFERT Order provides a list of commodities aimed at preventing antidumping and that the subject merchandise is on this list. Therefore the preventive nature of this order indicates that special export requirements can, and did, apply to subject merchandise prior to the initiation of the antidumping investigation. Petitioners also point to statements as described in the verification report by both Azovstal and Ilyich that pricing controls have applied to their exports of steel plate since 1995. In addition, Petitioners argue that the government-published price lists are convincing evidence that minimum price restrictions were applied to subject merchandise during the POI. Thus, the Department should not find that Azovstal and Ilyich are entitled to separate rates in the final determination.

Finally, Petitioners state that it is undisputed that upon initiation of this investigation, at the very least, the minimum price and registration requirements became applicable to Respondents' exports of subject merchandise. Petitioners argue that the policy behind applying a country-wide dumping margin, to avoid government circumvention of antidumping orders, is prospective in nature. Accordingly, Petitioners argue, even if the government controls had not been in effect during the POI, the prospective nature of the country-wide margin policy warrants application of a single-country-wide rate. Lastly, Petitioners argue that the recent government decree ordering the two respondents to merge makes clear that the government exercises direct control. Petitioners argue that the government is the alter ego of the companies and that this, combined with the registration and minimum price requirements, is the type of government control that warrants application of a single country-wide rate.

Respondents counter that the law and regulation issued on February 10, 1996 authorize the government to establish price guidelines for monitoring purposes, in certain circumstances, but only under the following conditions: (a) the prices are merely ''indicative'' and not mandatory; (b) they may be issued only for certain goods subject to antidumping procedures, import procedures, quotas, licenses, or other special regimes; and (c) these indicative prices may be established only to the extent that these goods may be exported free from state control, as provided in Article 20 of Ukraine's Law ''On Foreign Economic Activity.'' Respondents argue that Article 20, which discusses antimonopoly must be read together with the February 10, 1996 Presidential Decree. Respondents argue that Article 20 provides for state control of the export and import of weapons and certain other items (not including the subject merchandise) and specifically provides that any organizations, including state-owned ones, have no right to prevent other subjects of foreign economic activity from the free exercise of such activity. Respondents claim that this interpretation is consistent with statements by a MFERT official that no pricing controls were observed during the POI, and that the indicative prices did not apply to the subject merchandise during the POI.

Respondents further argue that Petitioners' theory that a system of indicative prices instituted after the POI retroactively translates into a system of price controls is neither factually correct nor in accordance with Department practice. Respondents argue that the intent of the law and the Department's practice has been to permit the calculation of separate rates where export prices, during the POI, were set by respondents rather than the government. Respondents argue that not only have all of the conditions for separate rates have been met, as evidenced at verification, but the unilateral actions of both Respondents to change their legal status from leaseholding societies to that of stock companies, and the right to pursue litigation against the government prove Respondents' independence from government control. Respondents further argue that Petitioners' assertion that registration requirements are part of the larger Ukrainian regime controlling

export activities is nonsense and that goods subject to export controls, as defined in the February 10, 1996 Resolution, does not include the subject merchandise.

Department Position

Based on evidence on the record and our verification findings, we have determined that Azovstal and Ilyich are entitled to separate rates in the final determination.

The Department's NME separate rates policy is based upon a rebuttable presumption that NME entities operate under government control and therefore do not make independent business decisions. This presumption can only be overcome by a respondent's affirmative showing that it conducts its exporting activities without government control. Evidence on the record supports a finding that Azovstal and Ilyich have met their affirmative evidentiary burden.

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 the test set forth in the *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 as further developed in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 2285 (May 2, 1994) (*Silicon Carbide*). 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.

The Department considers three factors which support, though do not require, a finding of *de jure* absence of government control. These factors include: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. 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 are 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.*

1. Absence of *De Jure* Control

As described in our Preliminary Determination and *Memorandum on Separate Rates,* dated June 3, 1997, Respondents have placed on the administrative record a number of submissions to demonstrate absence of *de jure* control. These documents include laws, regulations, and provisions enacted by the Government of Ukraine which deregulate Ukrainian state-owned enterprises and Ukrainian export trade. Moreover, Respondents provided laws and regulations specifically governing their enterprises, which provide these companies with legal autonomy to make their own operational and managerial decisions during the POI and are evidence of the good faith effort on the part of the Government of Ukraine to decentralize control of state-owned companies. For a more detailed description of these laws, see *Separate Rates Memorandum,* dated June 3, 1997.

Because the government has now created a right of ownership of business enterprises for private persons and collectives, leaseholding societies, such as Azovstal and Ilyich, formerly state-owned and operated, are now distinct legal entities. In general, this ownership right allows business enterprises to freely engage in economic activity, negotiate and sign contracts, and independently develop business plans. Collectives, like the leaseholding societies of Azovstal and Ilyich, may independently select management through elections by the workers collective and may exercise control and direction over the general director through a contract between the enterprise and the general director. Enterprises, including collectives, may have their own bank account, and, after taxes, may keep the profits from their sales, and engage in foreign economic activity, generally, without government interference.

Although there is no longer a general export licensing regime in place, the Ukrainian Government continues to retain *de jure* control over exports for certain categories of goods, including goods subject to antidumping duty investigations and antidumping duty orders. Mandatory controls are in place regarding: (1) the registration of contracts for export of these goods and (2) the setting of ''indicative prices'' for these goods by the government.

With regard to registration, foreign economic agreements (contracts) are registered with MFERT pursuant to the 1994 Order of the President, *On Registration of Certain Types of Foreign Economic Agreements (Contracts) in Ukraine Order of the President of Ukraine*, November 7, 1994. Under the February 24, 1996 MFERT Order, during the POI, it was necessary to register a contract for export of subject merchandise to the United States because under this Order, the United States is one of the listed countries and the subject merchandise is one of the listed goods. Therefore, contrary to the Ukrainian Government's assertions, contracts for export of the subject merchandise to the United States during the POI were legally required to be registered. However, we find that in this instance, registration is for statistical and tax collection purposes, and for monitoring compliance by exporters with international trading rules and agreements. There was no evidence at verification to indicate that through registration the Government of Ukraine did anything other than monitor foreign economic activity of exports of certain goods in order to prevent dumping by exporters subject to antidumping measures in other countries and thereby ensure compliance with international trading rules.

Moreover, even though MFERT must approve export contracts of over $3.5 million, we find that the purpose of this exercise is to monitor such activity for tax collection and to ensure that large volume exports of goods subject to antidumping measures or other international trade agreements are not being dumped and are in compliance with the government's international agreements (*e.g.*, suspension agreements with the European Union). Therefore, we find no evidence to support Petitioners' claim that by registering contracts for sales of subject merchandise during the POI the government was controlling export pricing, per se.

With regard to the setting of prices, since 1994 the government has set minimum export prices for certain categories of goods. While some minimum export prices are obligatory, others are more in the nature of guidelines to assist Ukrainian exporters in pricing their goods competitively in various export markets. During the POI, pursuant to the *Decree of the President of Ukraine On Measures Regarding the Improvement of Price Policy Configuration in Foreign Economic Activity,* February 10, 1996, the Government of Ukraine published these so-called ''indicative prices'' on a

monthly basis. According to the 1996 Decree, minimum prices are mandatory where the exporter of Ukrainian goods is subject to antidumping measures applied by other countries, including the initiation of antidumping investigations. The export of the subject merchandise during the POI was not subject to the mandatory pricing controls described. However, as Petitioners correctly point out, under this 1996 Decree, merchandise covered by this investigation was subject to mandatory pricing after the initiation of our antidumping investigation. However, there is no evidence on the record to support Petitioners presumption that the subject merchandise falls within the ''special regime'' referred to in the February 1996 Decree. Therefore, we cannot find that subject merchandise is included in a special export pricing regime.

In a somewhat analogous situation, the Department preliminarily determined that mandatory minimum export prices set by the Chinese government, intended to control worldwide prices of exported honey and to increase such prices through macro-economic means, did not preclude the respondent companies from receiving separate rates. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China,* 60 FR 14725 (March 20, 1995) (*Honey*). In *Honey,* the Department found that, among other things, the companies were free to independently negotiate export prices with their customers above the floor price. In other words, when considering the totality of all circumstances, the Department found in *Honey* that the companies had sufficient independence in their export pricing decisions from government control to qualify for separate rates. This is also the case with Azovstal and Ilyich, both of which the Department verified to have independently negotiated export prices above the minimum prices set by the Government of Ukraine. *See de facto* section below and the *Verification Report,* dated July 25, 1997.

Based on evidence on the record, we find that during the POI there was no *de jure* control of export prices of subject merchandise. Moreover, we find that, even though there was de jure control of export prices for subject merchandise after the initiation of our antidumping investigation, because the stated purpose of these minimum prices was to avoid dumping by Ukrainian exporters, such measures do not, in and of themselves, indicate that the Government of Ukraine controls export activities of companies. Rather, we have concluded that, similar to our determination in *Honey,* such government action is not contrary to a finding of separate rates, because its only purpose is to avoid dumping measures applied by other countries and because it demonstrates an effort on behalf of the government to comply with international trading rules as it enters the world marketplace.

The purpose of applying one country-wide rate in an NME context is to prevent an NME government from later circumventing an antidumping order by controlling the flow of subject merchandise through exporters which have the lowest margin. Here, the requirement of registration and the setting of floor prices do not demonstrate that the government can control exporters in such a manner. To the contrary, it is evidence of the government's good faith attempt to monitor exports of certain goods to ensure that such goods are not traded unfairly.

2. Absence of *De Facto* Control

Each respondent exporter has asserted, and we have verified, the following: (1) each sets its own export prices subject to indicative prices, as discussed below; (2) each negotiates contracts without guidance from any governmental bodies; (3) each makes its own personnel decisions with regard to selection of management through elections by the members of the leaseholding societies, and the General Director and his appointed Deputies have authority to negotiate and enter into contracts on behalf of the enterprise; and (4) each has separate bank accounts and retains the proceeds of its export sales (although 50 percent of foreign currency earnings must be converted into Ukrainian currency), uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. *See Verification Report,* dated July 25, 1997. In addition, there is no record evidence indicating that company-specific pricing during the POI was coordinated among exporters.

Both Azovstal and Ilyich stated that prices are negotiated with their customers and are not subject to approval or review by the government. However, both companies also told the Department's verifiers that prior to, and during the POI they were required by Ukrainian Customs officials to sell subject merchandise at the minimum price published monthly by MFERT for all sales to the U.S. market. *See Verification Report,* dated July 25, 1997. Thus, as discussed above, while there was no *de jure* control of export prices for subject merchandise during the POI, there was *de facto* control of such pricing by the Government of Ukraine. Nevertheless, as discussed above, we do not find that setting of minimum prices to eliminate dumping by exporters creates sufficient government control over exporting activities to disqualify Azovstal and Ilyich from receiving separate rates.

Furthermore, at verification additional information and documentation was provided which demonstrates that Azovstal and Ilyich were not controlled by the government, but were separate legal entities that were in control of their business operations and planning during the POI. *See Verification Report* at 3–6. For example, during the POI, both companies paid rent to the Ukraine State Property Fund, the government entity owning the steel plants leased by both companies, and entered into negotiations regarding an increase in rent due to hyperinflation. *Verification Report* at 6. Additionally, during the POI, a Cabinet of Ministers Decree was issued which attempted to merge the two respondents. *Verification Report,* Exhibit SR–3. However, during that time both companies continued the privatization process for state-owned companies, as was their legal right under the reforms instituted by the Government of Ukraine, discussed above. The merger did not transpire and shortly after the POI both companies became public joint stock companies. *Verification Report* at 6.

Additionally, when a decree was issued during the POI by the Ukraine State Property Fund appointing another General Director in place of the elected general director of Azovstal, the company went to the Ukrainian Arbitration Court. *Verification Report,* Exhibit SR–3. Azovstal claimed that by law the Ukraine State Property Fund had no authority to issue a decree which directly conflicted with legal reforms regarding a lease-holding society's right to elect its own management. *Id.* As a result, the Ukraine State Property Fund issued a second decree voiding the earlier decree, and Azovstal continues to have the same duly elected General Director. *Id.* Taken together, these findings provide further proof that Azovstal and Ilyich were not controlled by the government but were independent during the POI.

Based on the record evidence, we find that various legal reforms did provide Azovstal and Ilyich the ability to protect their rights to autonomy in their day to day business operations, including their exporting activities. *See Separate Rates*

Memorandum, dated June 3, 1997; *Verification Report*, dated July 25, 1997.

Consequently, we determine that there is, legally and factually, absence of governmental control of export functions during the POI. Contrary to Petitioners' arguments, the Department does not examine the period after the POI to determine separate rates. However, we will continue to closely examine the effect, in fact and in law, of actions of the Government of Ukraine with respect to any reassertion of government control over the export activities of these companies. However, based on the evidence on the record, we have granted separate rates for this final determination.

Ukraine-Wide Rate

As stated above, we have granted separate rates for Azovstal and Ilyich. However, all other Ukrainian companies will be subject to the Ukraine-wide rate.

U.S. import statistics indicate that the total quantity and value of U.S. imports of certain cut-to-length carbon steel plate from Ukraine is greater than the total quantity and value of steel plate reported by all Ukrainian companies that submitted responses. Given this discrepancy, we conclude that not all exporters of Ukrainian certain cut-to-length carbon steel plate responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the Ukraine-wide rate—to all exporters in Ukraine (other than the two named as receiving separate rates), based on our presumption that those respondents who failed to respond constitute a single enterprise, and are under common control by the Ukraine government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996).

This Ukraine-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 the information drawn from the petition.

As discussed above, we have treated all Ukrainian exporters that did not qualify for a separate rate as a single enterprise owned and controlled by the Government of Ukraine. Because some exporters of the single enterprise failed to respond to the Department's requests for information, the single enterprise is considered to be uncooperative. (*See Concurrence Memorandum*, dated October 24, 1997, for the list of exporters.) In such situations, consistent with section 776(b)(1) of the Act, the Department generally selects as adverse total facts available the higher of the average of the margin from the petition or the highest rate calculated for a respondent in the proceeding. *See also, Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China*, 96 FR 27222 (May 19, 1997). In the present case, the average margin in the petition is higher than any calculated rate. Accordingly, the Department has based the Ukraine-wide rate on the average petition rate of 237.91 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 (H. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1996)), clarifies that the petition is ''secondary information'' and that ''corroborate'' requires that the information relied upon have probative value.

In accordance with section 776(c) of the Act, we corroborated the margins in the petition to the extent practicable. The information contained in the petition indicates that petitioners calculated export price based on: (1) the import values declared to the U.S. Customs Service, and (2) an average export price derived from actual U.S. selling prices known to petitioners. We compared the starting prices used by petitioners, less the importer mark-ups, to prices derived from contemporaneous U.S. import statistics and found that the two sets of prices were consistent. We also compared the movement charges used in the petition with the surrogate values used by the Department in its company-specific margin calculations and found them to be consistent.

The information in the petition with respect to the normal value (NV) is based on factors of production used by the petitioners in the production of steel plate. Petitioners submitted usage amounts for materials, labor and energy, adjusted for known differences in production efficiencies. To account for differences between the production processes of petitioners and potential respondents, Petitioners submitted three cost models in the petition: (1) Basic Oxygen Furnace (BOF) Cost Model; (2) Open-Hearth Furnace Cost Model; and (3) Weighted Average Normal Value of the BOF and Open-Hearth methods.

The margins in the petition, which ranged from 201.61 to 274.82 percent, were obtained by Petitioners by comparing the normal values to the export price developed from customs values and to export prices developed from actual U.S. price quotes. For each method, petitioners submitted estimated dumping margins for the BOF method, the open-hearth method and a weighted-average of the two. See Corroboration Memorandum, dated June 3, 1997.

Comment 2: Pirated Sales

Petitioners contend that certain ''pirated'' sales of steel plate produced by Ilyich should be included in the margin calculation because there is a strong likelihood that a large volume of similar sales may have ultimately entered the United States. In addition, Petitioners argue that there is a very high likelihood that these sales have gone unreported and the Department should apply an overall facts available rate for Ilyich because they did not properly respond to the Department's questionnaires.

Ilyich argues that the Department properly excluded pirated sales from the preliminary margin calculations and should continue to do so for the final determination. Ilyich argues that it made these sales believing they were destined to third countries and had no knowledge that these sales were ultimately destined for the United States. Ilyich argues that at verification the Department examined two of these pirated sales and concluded that Ilyich had no prior knowledge that the shipments were to be delivered to the United States. Ilyich further claims that it is the Department's practice not to include such sales in its determinations under these circumstances and cited several cases as precedent.

Department Position

We agree with Respondent. It is the Department's practice to include as U.S. sales only those sales known by the producer/exporter to be destined for the United States at the time of sale and delivery. *See, e.g., Final Determination of Sales at Less Than Fair Value: Manganese Sulfate from the People's Republic of China,* 60 FR 52155, 52158 (October 5, 1995); *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation,* 60 FR 16440, 16445 (March 30, 1995). Based on findings at verification, the Department has determined that these originally non-U.S. bound shipments were delivered to the U.S. without prior knowledge of Ilyich. Therefore, consistent with our preliminary determination and Department practice, we have not included the pirated sales in the final margin calculation for Ilyich.

Comment 3: Surrogate Country Selection

Respondents argue that Brazil is an inappropriate surrogate for Ukraine for several reasons. Respondents state that, because Ukraine's economy has undergone radical transformations in recent years, the Department should reconsider its choice of a surrogate country based upon changed economic conditions and/or possible industrial incomparability. Respondents claim that the Department has shown its willingness to reconsider its choice of a surrogate country if a given country is no longer comparable and cite *Certain Helical Spring Lock Washers from the People's Republic of China:* Memorandum to David Binder from David Mueller, Office of Policy re: *AD Investigation of Sebacic Acid from the PRC:* Non-market Economy Status and Surrogate Country Selection (9/23/93), among others, to support their argument.

Next, Respondents argue that it is the Department's preference to select the country closest to the NME country under investigation in terms of the GDP when faced with multiple potential surrogates and cite several cases to support this position. For instance, Respondents compare the instant case to *Final Determination of Sales at Less Than Fair Value: Beryllium Metal from Kazakstan,* 62 FR 2648 (June 11, 1997), where the Department rejected Brazil as a surrogate because Brazil's GDP was far in excess of Kazakstan's. Respondents argue that the variance between Ukraine's GDP and Brazil's GDP is similarly excessive. Respondents contend that Brazil's Gross Domestic Product (GDP) is now more than double that of Ukraine and the World Bank classifies Brazil within a different tier of countries than Ukraine. Furthermore, Respondents claim that Brazil's industrial data is maintained via an accounting system which deviates from generally accepted accounting principles because it requires producers to maintain two separate sets of financial records, one to report historical costs of corporate activities and another to report the effects of inflation and currency fluctuations on those corporate costs and revenues. Respondents further argue that the Department's use of Brazilian labor rates also illustrates the inappropriateness of using Brazil as a surrogate. However, if Brazil is chosen as a surrogate, Respondents argue that surrogate prices from other countries should be used where the use of Brazilian prices will produce distorted results and cite *Certain Cased Pencils from the People's Republic of China,* 59 FR 55625 (Nov. 8, 1994) (*Pencils*), as precedent.

Respondents submit that Poland is a preferable surrogate choice because it is the only country which satisfies both statutory criteria of comparable economic development and significant production of CTL plate. Respondents argue that in practice the Department will change its choice of surrogate where it finds a compelling reason to make the change and cite *Notice of Final Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium from the Russian Federation,* 60 FR 16440 (March 30, 1995) (*Pure Magnesium from Russia*) and *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Ukraine,* 60 FR 16432 (March 30, 1995) (*Pure Magnesium From Ukraine*). Respondents argue that Poland is an appropriate surrogate in terms of the similarity of its history of economic development, industrial infrastructure and distribution of labor and production. In addition, Respondents submit that the quality of data publicly available from Polish companies compares to that of Brazil.

Petitioners counter that there is no basis nor compelling reason for changing surrogate countries in the final determination and further emphasize that the cases Respondents cite, *Pure Magnesium from Russia* and *Pure Magnesium from Ukraine,* did not affirmatively state that the Department will change surrogate countries where ''compelling reasons'' exist. The Department did not change surrogate countries in either case.

Furthermore, Petitioners argue that Brazil is comparable to Ukraine in terms of economic development, as recognized in this case and in other cases involving Ukraine. Petitioners claim that the World Bank's classification for Ukraine is preliminary and moreover, that this category contains countries whose per capita GNPs vary widely, including some that differ more widely from Ukraine's GNP than does Brazil's. Furthermore, Petitioners add that when the Department issued its surrogate country selection memorandum, it was aware of the GNP levels of Brazil, Poland, and Ukraine and stated that all countries are equally comparable to Ukraine in terms of economic development. Petitioners argue that even if Poland's GNP is closer, the Department has already determined that any such difference is insignificant. Petitioners argue that per capita GNP is only one of several measures the Department considers in determining the most appropriate surrogate country and cite *Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Romania,* 62 FR 31075 (June 6, 1997). Petitioners further argue that Poland's rate of per capita GNP growth was positive, while that of both Brazil and Ukraine was negative. Additionally, the purchasing power parity GNP for Brazil and Poland are virtually the same. Moreover, citing *Technoimportexport* v. *United States,* 15 CIT 250, 255, 766 F. Supp 1169, 1175 (1991) (*Technoimportexport*), Petitioners argue that the Department does not have to choose the most comparable surrogate country and cite petitioners claim that Brazil also satisfies the Department's other criteria for selection of a surrogate country.

For example, Petitioners contend, Brazil is a significant producer of subject merchandise and there is a wealth of publicly available information on factor prices in Brazil. Furthermore, Petitioners claim that use of Brazil as the surrogate country will not produce aberrational results in this investigation and argue that in the case cited by Respondents, *Pencils,* the Department rejected certain surrogate data because it pertained to a type of material not used to produce the subject merchandise. Moreover, Petitioners claim that the alleged inconsistencies between Brazilian accounting methods and GAAP are not sufficient grounds to deem financial ratios aberrational since the Department has extensive experience dealing with Brazilian financial statements.

Petitioners argue that the Department has obtained reliable Brazilian surrogate values for virtually all factors of production and stress that the record does not contain complete surrogate values for Poland. Moreover, Petitioners argue that the data available for Poland is of lesser quality. For example, Petitioners claim that the format used in the Polish financial statements renders them virtually impossible to use for purposes of calculating surrogate financial ratios. Petitioners therefore argue that Poland does not satisfy the information-availability criterion that the Department uses to assess the appropriateness of a potential surrogate country.

Finally, Petitioners argue that the Department should rely only on Brazil for all surrogate values in the final determination based on its preference for using only one surrogate country.

Department Position

We agree with Petitioners and have continued to use Brazil as the surrogate country in the final determination. Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME and (2) are significant producers of comparable merchandise. As discussed in the preliminary determination, Brazil is at a level of economic development comparable to Ukraine in terms of per-capita GNP levels and distribution of the labor force in the varying sectors of the economy. Furthermore, Petitioners are correct in stating that even if Poland's GDP is closer to that of Ukraine's than is Brazil's, per capita GNP is only one of the measures that the Department considers in determining the most appropriate surrogate country. Furthermore, Brazil is a significant producer of comparable merchandise. Thus, Brazil fulfills both statutory criteria and qualifies as an acceptable surrogate for Ukraine under section 773(c)(4) of the Act. *See also* the January 27, 1997 memorandum from the Office of Policy discussing our selection of surrogate countries for Ukraine (*Policy Memo*).

Congress provided the Department with broad discretion in selecting surrogate countries in NME cases. *See* 19 U.S.C. 773(c)(1)(B) (valuation of factors of production shall be based on the best available information from a market economy country(s) considered to be appropriate); *see also, Lasko Metals* v. *United States*, 43 F3d. 1442, 1443 n.3 (Fed. Cir. 1994). As stated above, Brazil qualifies as an appropriate surrogate because it satisfies the statutory criteria listed. Furthermore, we were able to obtain publicly available contemporaneous information on all factor inputs required. Thus, the selection of Brazil also achieves the Department's goals of providing transparency and reasonable accuracy in valuing factors. Moreover, our choice of Brazil provides predictability for Ukrainian exporters as the Department has used Brazil as a surrogate for Ukraine in past antidumping proceedings. *See Initiation of Antidumping Duty Investigation: Pure and Alloy Magnesium for the people's Republic of China, the Russian Federation, and Ukraine,* 80 FR 21748 (April 26, 1994).

While we have used surrogate prices for selected surrogate values from countries other than the selected surrogate country in previous cases, to the extent possible it is the Department's preference and practice to rely on information from the first choice surrogate country to value all factors for which such information is available. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* 57 FR 21058 (May 18, 1992).

Thus, because acceptable public information from Brazil is available for all material input factors, it is unnecessary for us to use data from other countries. Therefore, the Department has continued to use only Brazil as the most appropriate surrogate country for purposes of this final determination. *See generally, Policy Memo.*

Comment 4: Commissions

Azovstal argues that commissions were properly excluded from its database because the company receiving commissions was not an affiliated reseller in the United States. Azovstal further argues that, because the payment of a commission on a U.S. sale in a non-market economy (NME) investigation is not offset by direct selling expenses on home market sales, the Department ignores home market sales and relies solely on surrogate SG&A expenses in calculating normal value. Azovstal cites several cases where the Department has rejected similar adjustments in prior NME proceedings, including *Final Determination of Sales at Less than Fair Value: Coumarin from the People's Republic of China,* 59 FR 66895 (December 28, 1994); *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991); and *Final Notice of Sales at Less than Fair Value: Pure Magnesium from Ukraine,* 60 FR 16432 (March 30, 1995).

Petitioners argue that, because these commissions have been verified and there is no evidence to indicate that the rate of the commission was other than arm's length, the Department must deduct these commissions from U.S. price pursuant to 19 CFR section 353.41(e)(1). Furthermore, Petitioners claim that the cases cited by Azovstal do not support its argument and that in this case, the commissions paid to AST, Avostal's reseller in London, have not been taken into account in the U.S. or the foreign market price.

Department Position

In accordance with section 772(d)(1)(A), in CEP circumstances, the Department's normal practice is to deduct commissions from U.S. sales price as direct selling expenses if the commissions were incurred when making the sale to the United States. *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). In the present case, we do not have CEP sales and have not deducted commissions in calculating EP. Azovstal did not incur any commissions directly on U.S. sales, as all sales were made through trading companies not located in the United States, which incurred the selling expenses associated with the individual transactions. Therefore, we have continued to utilize the methodology from our preliminary determination and have not adjusted for commission expenses on U.S. sales for this final determination.

Comment 5: Movement Charges

Petitioners argue that the Department should use facts available to determine the surrogate value of movement and storage charges incurred but not reported by both respondents. Petitioners argue that Azovstal had unreported movement charges for which there are no surrogate values on the record and that Ilyich did not report the costs for storage for which there are also no surrogate values on the record. Therefore, the Department should apply facts available.

Azovstal claims that it reported the appropriate movement charges in its April 11, 1997 and August 22, 1997, responses as requested by the Department. In regards to Petitioners allegations regarding storage charges, Azovstal and Ilyich argue that these charges are not movement expenses but are direct selling expenses. Respondents cite the Department's Antidumping

Manual which indicates that expenses are directly related to the sales under consideration and assert that it is the Department's practice to make a circumstance of sale adjustment for such expenses. Moreover, both Azovstal and Ilyich claim that the Department does not make these adjustments in NME cases because there is no offset for home market sales. Both Respondents argue that consistent with this methodology, the Department did not even include a field for warehousing or storage in its U.S. Sales file. Under the circumstances, Azovstal argues that the Department should use its reported charges rather than facts available. Therefore, both Azovstal and Ilyich argue that the Department should make no adjustments for storage charges for either company.

Department's Position

Pursuant to section 773(6)(B), the Department adjusts normal value for movement expenses which are incident to bringing the subject merchandise in condition packed ready for shipment to the United States. We verified that Respondents reported movement expenses to our satisfaction. Moreover, the surrogate value that we applied in our preliminary determination included all movement and handling charges to ship subject merchandise from the factory to the port, which also takes into account storage/warehousing expenses. Therefore, any additional deductions for movement expenses would, in effect, result in double-counting.

Additionally, we agree with Respondents' claim that the Department does not adjust EP sales for warehousing expenses under section 772(c)(2)(A). In an NME case, it is the Department's policy to not deduct warehousing expenses from EP because there is no comparable adjustment on the home market side.

Comment 6: Packing Expenses

Petitioners argue that, because there is no evidence to suggest that the prices on Respondents' sales invoices do not include packing costs, the Department incorrectly added packing expenses to Respondents' reported U.S. prices for purposes of the preliminary determination.

Respondents did not comment on this issue.

Department Position

We agree with Petitioners. We incorrectly added packing expenses to export price in the preliminary determination. Accordingly, for the final determination we have adjusted for packing expenses in the calculation of normal value.

Comment 7: Factory Overhead, SG&A, and Profit

Petitioners claim that the Department's preliminary results did not include all factory overhead costs and that a dumping margin cannot accurately be calculated without the inclusion of non-depreciation overhead costs. Although Petitioners have been unable to find publicly available information in Brazil, they provided one integrated Korean steel producer's public financial statement (Pohang Iron & Steel Co., Ltd. (''POSCO'')) which provided a detailed list of the types of non-depreciation expenses incurred as manufacturing costs. Petitioners urge the Department to either use the percentages from POSCO's financial statement as facts available to approximate the proper amount of factory overhead costs, or use the Department's resources to find additional information on the surrogate value.

Respondents argue that Petitioners' claim that surrogate value information from Brazil on factory overhead must be adjusted based upon the experience of a Korean steel producer underscores the flawed nature of this information and of the surrogate value information from Brazil for SG&A and profit. Respondents argue that the Department should reject information from Brazil, because it is insufficient and use information from Poland in calculating normal value.

Respondents further argue that if the Department should continue to use Brazil as the surrogate, it should recalculate the surrogate overhead, SG&A, and profit rates in accordance with generally accepted accounting principles as the Department did in *Titanium Sponge from the Russian Federation*, 61 FR 3938 (July 29, 1996) (*Titanium Sponge*) (see below). Furthermore, Respondents argue that the Department was incorrect to use data from the Brazilian steel producers' financial statements that was for the POI. Respondents argue that, consistent with its prior practice, the Department should use financial data contemporaneous with the POI and assert that the use of a ''constant of currency'' accounting system is inappropriate now that Brazil's inflation rate is only at 18 percent. Respondents provided the 1996 public financial statements of two Brazilian companies and provided recalculated ratios for overhead, SG&A, and profit.

Respondents argue that in *Titanium Sponge from the Russian Federation*, 61 FR 3938 (July 29, 1996) (*Titanium Sponge*), the Department used only the line item expenses which corresponded directly to the factor values which were calculated. Respondents argue that the Department should make adjustments to the reported net income data and further asserts that, when calculating the SG&A factor the Department incorrectly included profit sharing expenses. Respondents state that profit sharing expenses do not represent actual expenses incurred by the companies but reflect the value of profits shared with employees and management, dividend distributions to employees, and annual taxes on net income.

Petitioners rebut by stating that the Polish financial statements are substantially less reliable than the Brazilian financial statements. Petitioners claim that, because the Polish financial statements fail to separately account for costs of sales and SG&A costs, any ratios calculated from the financial statements would be distorted. Also, Petitioners state that one of the Polish financial statements contains no specific information on factory overhead costs. Petitioners additionally argue that the Department's preliminary calculations are consistent with Brazilian GAAP and the Department's normal methodology for calculating costs. The Petitioners maintain that, while the methodology used in *Titanium Sponge* was required by the insignificance of the operating costs in that case, in this case, the other general expenses are not insignificant and were properly included in the calculated ratios. Petitioners argue that it is the Department's practice to include all non-extraordinary cost items in its calculations. Thus, Petitioners argue because SG&A normally includes other costs like non-operating costs, the Department should disregard Respondents' claim that only those items nominally identified as SG&A should be included. Petitioners further argue that the Department appropriately included social contributions and profit sharing costs in its SG&A calculation. Petitioners additionally assert that constant currency financial statements provide the most reasonable measure of the overhead, SG&A, and profit ratios because it is the Department's preference to base its calculations on such statements and because the ratios would be calculated on values that are on the same basis. Petitioners argue that the Department should use the 1996 financial statements of CSN previously submitted by Petitioners.

Finally, Petitioners argue that, if the Department does use the financial statements prepared under the corporate legislative method of accounting or

historical cost method, it should revise the calculations submitted by Respondents. Petitioners argue that Respondents have understated the SG&A costs by excluding certain non-operating costs and have artificially reduced net income by ignoring income actually earned by the companies while at the same time failing to account for the increase in net income that results from not taking certain expenses into account.

Department Position

We disagree with Petitioners' suggestion to use the data from a Korean steel producer's financial statement to calculate factory overhead and we also disagree with Respondents' suggestion to use Polish data. It is the Department's practice to only use data from those countries listed as potential surrogates identified in the *Policy Memo* (*see* cases cited above.) Korea was never identified as a potential surrogate for the Ukrainian economy. Although Poland was identified as a potential surrogate, it is the Department's preference to use a single surrogate country as the source of data in a NME investigation unless such value is aberrational or otherwise inappropriate. *See* Comment 3. Therefore, the Department will continue to use Brazilian data for the final determination.

We agree with Respondents that the Department should use the financial data of producers in the surrogate country which are contemporaneous with the POI, and we have done so for this final determination. In general, the Department will not seek information from particular producers in the surrogate country to value material inputs or electricity. The exception to this rule is for overhead, SG&A, and profit. For these categories of costs, the Department will seek product-specific information from producers in the surrogate country, where possible. *See Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products from the People's Republic of China,* 62 FR 1708 (January 13, 1997). Based on the submitted information and the Department's own research, we agree with Respondents that the financial data from the 1996 income statements of the two Brazilian steel companies we used in the preliminary determination, CST and Usiminas, are the most appropriate surrogate information available to calculate the percentages for overhead, SG&A, and profit for our final determination. In the preliminary determination the Department determined that both CST and Usiminas were significant producers of merchandise similar to that under investigation and both had public financial statements available for the Department's calculations.

When using Brazil as a surrogate country in the past, including in our preliminary determination, the Department used constant currency financial statements because they adjust costs for the effects of inflation. Brazil, in the past, has experienced significant inflation and significant changes in the value of its currency. However, in 1996, the Brazilian economy was no longer in a state of hyperinflation as its inflation rate dropped to 18 percent and its currency stabilized. In non-hyperinflation situations, it is the Department's practice to calculate ratios based upon historical cost financial statements. *See generally,* SAA at 164. The corporate legislative method of accounting is the primary source for GAAP in Brazil. Therefore, we have used the 1996 income statements of CST and Usiminas, prepared under the corporate legislative method of accounting in our final determination.

In contrast to our preliminary determination, for this final determination, in order to ensure that all costs are properly accounted for, we revised the overhead ratio to include employee profit sharing in accordance with our practice. Despite the manner in which labor costs are packaged (*i.e.*, either through straight salary, profit sharing, etc.), total labor costs remain the same to the employer. This includes all profit sharing expenses. *See Porcelain-on-Steel Cookware from Mexico: Notice of Final Results of Antidumping Duty Administrative Review,* 62 FR 25908 (May 12, 1997), where the Department determined that profit sharing expenses relate to the compensation of direct labor. Labor is captured in the cost of manufacturing which is part of the cost of sales. Thus, we have included profit sharing in overhead. However, if a company broke out profit sharing between employees and management, as CST has done, we included management profit sharing in the SG&A calculation and employee profit sharing in the overhead calculation. *See Final Determination Calculation Memorandum,* dated October 24, 1997.

Consistent with prior Department practice, we have continued to include social contributions in SG&A for the final determination. *See Final Determination Calculation Memorandum,* dated October 24, 1997. *See also, Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determinations: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Brazil,* 58 FR 7080 (February 4, 1993).

Comment 8: Usage Factors

In the preliminary determination, the Petitioners argue that the Department did not calculate the dumping margin for all of Respondents' U.S. sales. Petitioners argue that the Department's inability to calculate dumping margins results directly from Respondents' failure to provide the factor usage data required to determine normal value and that, as a result, the Department should use adverse facts available to determine the dumping margins for all U.S. sales for which Respondents failed to provide the usage factor information.

Respondents argue that the Department should not use adverse facts available to determine dumping margins for any U.S. sales by Azovstal and Ilyich because the absence of normal value matches for these sales was not due to the companies' failure to report factor usage for those sales. Rather, it was the result of typographical errors which resulted in incorrect CONNUMU designations. Respondents argue that factor usage was provided by both companies for all sales and should be used to determine dumping margins. Azovstal argues that its missing matches were the result of a typographical error in the field ''PLCHECK'' and an error in the related portion of the CONNUMU which described the product as such. Azovstal argues that for all of Azovstal's products, the field ''PLCHECK'' should be categorized the same way because Azovstal only produces merchandise with that characteristic. Azovstal claims that a review of those CONNUMUs described by Petitioners as not having matching normal values in relation to other CONNUMUs in Azovstal's U.S. Sale Listing and Azovstal's Section D computer response clearly shows that the absence of corresponding factor usages for the CONNUMUs in question is the result of an inadvertent error.

Ilyich argues that its two CONNUMUs without corresponding factor usages are for products identical to those listed under two other CONNUMUs. Ilyich argues that when preparing its Section C Response it inadvertently used two CONNUMUs for the same products in two instances. Ilyich argues that, as such, there is no need to use facts available. Rather, the Department has all necessary data and should treat each pair of corresponding CONNUMUs as a single CONNUMU.

Department Position

Petitioners are correct that we did not calculate the dumping margin for all U.S. sales because of the absence of some normal value matches, as described above. However, while the Department is always concerned with such discrepancies, we did not identify any attempt by Respondents to mislead the Department or to distort information on the record, nor does the record indicate that Respondents were uncooperative. Rather, the record indicates that, while the Respondents inadvertently misreported their CONNUM listings, they nevertheless complied with all Department requests to the best of their ability under the circumstances. Therefore, we have determined that such inadvertent errors do not warrant an overall application of adverse facts available. Accordingly, for this final determination we have corrected all such errors using an overall average of the final dumping margins for each Respondent's U.S. sales. The details of these errors and steps we have taken to correct them are set forth in the *Final Determination Calculation Memorandum,* dated October 24, 1997. *See also, Concurrence Memorandum,* dated October 24, 1997.

Comment 9: Surrogate Value for Labor

Respondents argue that the Department's calculation of a surrogate value for labor illustrates the distorted effects which result from using Brazil as a surrogate for Ukraine. Respondents argue that the Department's BISNIS report indicates that Ukraine's hourly labor rate is less than $1.00. Therefore, Respondents argue, Poland is a preferable surrogate because, when compared to Brazil it is more comparable in terms of its labor rates. Furthermore, Respondents claim that Poland is also more comparable to Ukraine in terms of the makeup of its workforce and the percentage of the workforce engaged in industrial activity.

Petitioners argue that Respondents are comparing general employment data for Ukraine to inadmissible new information regarding Poland. Petitioners further argue that even if the Polish information was admissible, it does not support Respondents' challenge to the use of Brazil as a surrogate country because the information does not provide surrogate values related to labor costs for making steel or the costs of providing housing for workers.

Department Position

As discussed in Comment 3, we have determined that Brazil is the appropriate surrogate country for this investigation. Furthermore, the Department has determined, that Brazilian wage rates are not aberrational but provide a reasonable surrogate value for the cost of labor for producing steel and thus, do not warrant an attempt to find more comparable values. Therefore, we have continued to use the same labor calculation used in the preliminary determination in the final determination.

Comment 10: Labor Usage Rates

Petitioners argue that, because the Department examined Azovstal's reported labor usage rates at verification and determined that they were inaccurate, the Department should revise Azovstal's reported labor usage rates to reflect its verification findings.

Respondents did not comment on this issue.

Department Position

We agree with Petitioners. We verified the correct labor rates and have incorporated those figures for the purpose of our final determination.

Comment 11: Siliconmanganese Slag

Respondents claim that slag is a by-product that has relatively little value in relation to the primary product produced, with the slag's market value depending on its use. Respondents argue that the Department should not value siliconmanganese slag using the full value of ferroalloys since to do so would produce an aberrational surrogate factor that is far greater in value than the slag at issue. Respondents argue that siliconmanganese slag is a substitute for manganese ore and is valued in the market based on its manganese content. Respondents assert that the proper valuation for Ukrainian siliconmanganese slag is a percentage of the surrogate value of manganese ore, rather than 100 percent of the value of ferroalloys.

Petitioners argue that the value of siliconmanganese should be based on the value of ferroalloys because Respondents claim that the input is used only as a substitute for manganese ore is unsupported. Furthermore, Petitioners argue that the figures quoted by Respondents regarding the alleged percentage of manganese content in siliconmanganese slag and the alleged value of siliconmanganese as a percentage of manganese ore are based on an unverified, untimely submitted letter. However, Petitioners argue that if the Department does decide to use the information provided by Respondents, as facts available, the value of siliconmanganese slag should be calculated at a higher percentage of the value of manganese ore.

Department Position

We agree with Respondents in part. Based on the Department's knowledge of the steel production process and independent research (including 15 Encyclopedia of Chemical Technology (4th Ed. 1995) at 963–980 and Velichko, et al., 1 Stal' (1993), a Ukrainian article which explains the typical composition of siliconmanganese for a specific Ukrainian plant), we have determined that the chemical makeup of siliconmanganese is primarily manganese. Therefore, we have valued siliconmanganese slag at 100 percent the value of manganese ore.

Comment 12: Limestone, Dolomite

Respondents claim that the Department should not value limestone and dolomite based upon the full value of lime. Respondents argue that, not only is limestone probably the least expensive of all raw materials used in the industry, but, based on information from the U.S. Geological Survey, in the United States limestone and dolomite are valued at 8.39 percent and 8.68 percent of lime, respectively. Respondents claim that the Department should, therefore, value limestone and dolomite using the Survey's percentages.

Petitioners argue that the Department's valuation of limestone and dolomite is correct. Petitioners claim that a single value was applied to both products as information available because Respondents failed to provide separate information on each factor. Petitioners claim that Respondents are now attempting to file new information which is untimely, and assert that, even if this information were admissible, it is unusable because the alleged values are based on U.S. statistics. Petitioners further argue that nothing in the record supports Respondents' implication that the relative value of lime to limestone in the United States is equivalent to that in Brazil and that there is no information regarding the value of dolomite to limestone in any country.

Department Position

We agree with Petitioners. Moreover, the Department's research indicates that both limestone and dolomite are equivalent to lime. *See* Making, Shaping and Treating of Steel (10th ed. 1985). We have, therefore, continued to value limestone and dolomite at the full value of lime for the final determination.

Comment 13: Wood

Respondents claim that the wood it utilizes in packing/loading was verified through invoices provided to the Department.

Petitioners argue that the Department should use its PAI information and conversion factor to value wood.

Department Position

Based on both Petitioners' and Respondents' submissions and briefs, we have used Respondents' value for softwood and applied Petitioners' conversion methodology to calculate a factor for wood packing. *See Final Determination Calculation Memorandum*, dated October 24, 1997.

Comment 14: Publicly Available Information (PAI)

Petitioners argue that the Department should use the factor value information contained in it submissions because this information is the only reliable PAI on the surrogate values of the factors, and because the information submitted by Respondents is based on an inappropriate surrogate country and is fraught with errors.

Respondents argue that the Department should not use Petitioners' PAI. Respondents argue that the Department should change its surrogate from Brazil to Poland (Comment 3). Respondents argue that much of the information on the record concerning material factors for Poland are UN statistics corresponding to the statistics submitted by Petitioners themselves for Brazil, as well as to statistics used by the Department in its preliminary determination.

Department Position

We do not agree with Petitioners' contention that its own publicly available information is the only reliable information for valuing factors. However, as stated throughout this notice, the Department has continued to use Brazil as the surrogate for the final determination. Therefore, whether the information on Poland is reliable is irrelevant, as we have only used PAI from Brazil to value factors in this investigation.

Continuation of Suspension of Liquidation

On October 24, 1997, the Department signed a suspension agreement with the Government of Ukraine (the Agreement). Therefore, we will instruct Customs to terminate the suspension of liquidation of all entries of cut-to-length carbon steel plate from Ukraine. Any cash deposits of entries of cut-to-length carbon steel plate from Ukraine shall be refunded and any bonds shall be released.

On October 14, 1997, we received a request from Petitioners requesting that we continue the investigation. We received a separate request from the United Steelworkers of America, an interested party under section 771(9)(D) of the Act, on October 14, 1997. Pursuant to these requests, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following margins of dumping:

Manufacturer/producer/exporter	Weight-average percentage margin
Azovstal	81.43
Ilyich	155.00
Ukraine-Wide Rate	237.91

The Ukraine-wide rate applies to all entries of subject merchandise except for entries from Azovstal and Ilyich.

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's injury determination is negative, the agreement will have no force or effect, and the investigation shall be terminated. *See* section 734(f)(3)(A) of the Act. If, on the other hand, the Commission's determination is affirmative, the Agreement shall remain in force but the Department shall not issue an antidumping duty order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsection (d) and (1) of the Act, and the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. *See* section 734(f)(3)(B) of the Act.

This determination is published pursuant to section 735(d) of the Act.

Dated: October 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30391 Filed 11–18–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–808]

Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate From Ukraine

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

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping duty investigation involving certain cut-to-length carbon steel plate (CTL plate) from Ukraine. The basis for this action is an agreement between the Department and the Government of Ukraine wherein the Government of Ukraine has agreed to restrict the volume of direct or indirect exports to the United States of CTL plate from all Ukrainian producers/exporters and to revise its prices to eliminate completely sales of this merchandise to the United States at less than fair value.

EFFECTIVE DATE: October 24, 1997.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, or Eugenia Chu, Office of AD/CVD Enforcement III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue N.W., Washington, D.C. 20230; telephone (202) 482–1324, or (202) 482–3964 respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1996, the Department initiated an antidumping investigation under section 732 of the Tariff Act of 1930, (the Act), as amended, to determine whether imports of CTL plate from Ukraine are being or are likely to be sold in the United States at less than fair value (61 FR 64051 (December 3, 1996)). On December 19, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination (see ITC Investigation Nos. 731–TA–753–756). On June 11, 1997, the Department preliminarily determined that CTL plate is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (62 FR 31958, (June 11, 1997)).

The Department and the Government of Ukraine initialed a proposed agreement suspending this investigation on September 24, 1997. On September 25, 1997, we invited interested parties

to provide written comments on the agreement and received comments from Geneva Steel, Gulf States Steel, Bethlehem Steel Corp., U.S. Steel Group, United Steel Workers of America, and the Government of Ukraine.

The Department and the Government of Ukraine signed the final suspension agreement on October 24, 1997.

Scope of Investigation

See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine, signed on October 24, 1997.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with Section 734 (l) of the Act, we have determined that the agreement will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation, that the agreement is in the public interest, and that the agreement can be monitored effectively. See Public Interest Memorandum, dated October 24, 1997. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(l) of the Act have been met. The terms and conditions of this agreement, signed October 24, 1997, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries of cut-to-length carbon steel plate from Ukraine entered or withdrawn from warehouse, for consumption, as directed in our notice of ''Preliminary Determination of Sales at Less Than Fair Value: Cut-to-Length Carbon Steel Plate from Ukraine'' and ''Postponement of the Final Determination: Cut-to-Length Carbon Steel Plate from Ukraine'' is hereby terminated. Any cash deposits on entries of cut-to-length carbon steel plate from Ukraine pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

On October 14, 1997 we received a request from petitioners requesting that we continue the investigation. We received separate requests for continuation from Bethlehem Steel Corp., U.S. Steel Corp. (A Unit of USX Corporation), and the United Steelworkers of America, interested parties under section 771(9)(D) of the Act. Pursuant to these requests, we have completed the investigation in accordance with section 734(g) of the Act, and have notified the International Trade Commission (ITC) of our determination. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated (see section 734(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue an antidumping duty order as long as the suspension agreement remains in force (see section 734(f)(3)(B) of the Act).

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: November 7, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Agreement Suspending the Antidumping Investigation on Certain Cut-To-Length Carbon Steel Plate From Ukraine

For purposes of encouraging free and fair trade in certain cut-to-length carbon steel plate (CTL plate), establishing more normal market relations, and preventing the suppression or undercutting of price levels of the domestic products by imports of the merchandise subject to this Agreement, the United States Department of Commerce (''the Department'') and the Government of Ukraine enter into this suspension agreement (''the Agreement'').

Pursuant to this Agreement, the Government of Ukraine will restrict the volume of direct and indirect exports to the United States of CTL plate from all Ukrainian producers/exporters, subject to the terms and provisions set forth below.

On the basis of this Agreement, pursuant to the provisions of Section 734(1) of the Tariff Act of 1930, as amended, by the Uruguay Round Agreements Act, as effective on January 1, 1995 (''the Act'') (l9 U.S.C. 1673c(1)), the Department shall suspend its antidumping investigation with respect to CTL plate produced in Ukraine, subject to the terms and provisions set forth below. Further the Department will instruct the U.S. Customs Service (''Customs'') to terminate the suspension of liquidation of, and release any cash deposit or bond posted on, CTL plate covered by this Agreement as of the effective date of this Agreement.

I. Definitions

For purposes of this Agreement, the following definitions apply:

A. ''Date of Export'' for imports of subject merchandise into the United States shall be considered the date the export license was issued.

B. ''Parties to the Proceeding'' means any interested party, within the meaning of section 353.2(k) of the Department's Regulations, which actively participates through written submissions of factual information or written argument.

C. ''Indirect Exports'' means arrangements as defined in Section III.E of this Agreement and exports from Ukraine through one or more third countries, whether or not such exports are further processed, insofar as they remain within the scope of the Agreement, and includes further processing which results in minor alterations, or under certain limited circumstances, as described in Section VII. G., further processing which results in substantial transformation as a result of an attempt to circumvent the Agreement, whether or not such exports are sold in one or more third countries prior to importation into the United States and whether or not the Ukrainian producer knew the product was destined to enter the United States.

D. For purposes of this Agreement, ''United States'' shall comprise the customs territory of the United States of America (the 50 States, the District of Colombia and Puerto Rico) and foreign trade zones located in the territory of the United States of America.

E. ''For Consumption'' means all CTL plate sold to customers, such as, trading companies, distributors, resellers. end-users, or service centers.

F. Customer means an entity, such as a steel service center, reseller, trading company, end-user, etc., which consumes CTL plate as defined in Section I.E.

G. ''Date of Sale'' is defined as the date on which price and quantity become firm, e.g.* the specification date or, in the case of a long-term contract, the date of contract, as recorded in the company's records kept in the ordinary course of business.

H. ''Export License'' is the document issued by the Ministry of Foreign Economic Relations (''MINFER'') which must accompany all shipments of CTL plate from Ukraine to the United States, and must contain all of the information enumerated in the Appendix to this Agreement, except that Date of Entry and Final Destination may be omitted if unknown to the MINFER and the licensee. It shall be required for customs clearance into the United States.

I. ''Reference Price'' means the price calculated by the Department, as described in Section IV, on a quarterly basis to be used as a floor price for sales of Ukrainian CTL plate into the United States.

J. ''Relevant Period'' for the export limits of the Agreement means the period November 1, through October 31 of each year that the Agreement is in effect.

II. Product Coverage

The products covered by this Agreement include hot-rolled iron and non-alloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this Agreement are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'') for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive.

Specifically excluded from subject merchandise within the scope of this Agreement is grade X–70 steel plate.

III. Export Limits

A. The export limit for CTL plate for the first Relevant Period shall be 158,000 metric tons. Of this export limit not more than 20,000 metric tons may be utilized in selling CTL plate which is 0.375 inches or less in actual or nominal thickness. The parties also agree that an increase in the export limit for each subsequent Relevant Period shall be made under the following circumstances: (1) The Government of Ukraine shall receive a 5 percent increase in the export limit for each subsequent Relevant Period if the weighted-average F.O.B. sales price for A36 plate over 0.375 inches exceeds the reference price by more than 5 percent during the most recently completed Relevant Period; (2) this increase in the export limit may be used only for exports of A36 plate which is over 0.375 inches in thickness; (3) the determination to increase the export limit for each subsequent Relevant Period will be made by the Department based on the Government of Ukraine's compliance with all relevant data reporting requirements.

B. No later than 60 days prior to the end of the first Relevant Period, the Department shall calculate an upward or downward adjustment to the next Relevant Period's export limit based upon changes in U.S. apparent consumption for steel plate. U.S. apparent consumption will be calculated using official statistics from the U.S. Census Bureau and data from the American Iron and Steel Institute regarding domestic shipments. The maximum adjustment will be plus or minus no more than 6 percent per Relevant Period, and will be calculated by comparing the most recent twelve months of data for U.S. apparent consumption available to the Department at the time of the calculation to the level of the previous corresponding twelve months of data. The Department will then apply the adjustment to the Relevant Period's export limit. The Department will similarly adjust the export limit every Relevant Period, and the effects of the adjustment will be cumulative. Deductions from the export limits shall be made based on the ''Date of Export'', as defined in Section I. MINFER will not issue Export Licenses accounting for more than sixty percent of the export limit for any Relevant Period during either semi-annual period within such Relevant Period.

C. On and after the effective date of this Agreement, the Government of Ukraine will restrict the volume of direct and indirect exports of CTL plate to the United States, and the transfer and withdrawal from inventory of CTL plate (consistent with the provisions of Section III.E), in accordance with the export limits then in effect.

D. Any export of CTL plate shall not when cumulated with all prior exports in such Relevant Period exceed the export limit for that Relevant Period.

E. Any inventories of CTL plate currently held in the United States by a Ukrainian legal entity and imported into the United States between November 5, 1996 and the effective date of this Agreement will be subject to the following conditions:

1. Such inventories will not be transferred or withdrawn from inventory for consumption in the United States without an Export License issued by MINFER. Any such transfers or withdrawals from inventory shall be deducted from the export limits in effect at the time the Export License is issued.

2. A request for an Export License under this provision shall be accompanied by a report containing the information set forth in the Appendix to this Agreement.

F. Any arrangement involving the exchange, sale, or delivery of CTL plate products from Ukraine, whether or not further processed, to the degree it results in the sale or delivery in the United States of CTL plate from a country other than Ukraine, is subject to the requirements of Section V and will be counted toward the export limits. Any such transaction that does not comply with the requirements of Section V will be deducted from the export limits pursuant to Section VII.

G. Where CTL plate is imported into the United States and is subsequently re-exported or re-packaged and re-exported, the export limits shall be increased by the quantity of product re-exported. Such increase will be applicable to the Relevant Period corresponding to the time of such re-export. Such increase will be applied only after the Department receives, and has the opportunity to verify, evidence demonstrating original importation, any re-packaging, and subsequent exportation. The re-exported material must be identical to the imported material.

H. Export Licenses for a given Relevant Period may not be issued after the expiration of the Relevant Period, except that Export Licenses not so issued may be issued during the first three months of the following Relevant Period, up to a maximum of 15 percent of the export limit for that following Relevant Period. Such ''carried-over'' quota shall be counted against the export limits applicable to the previous Relevant Period.

Export Licenses for up to 15 percent of the export limits for a subsequent Relevant Period may be issued as early as 45 days prior to the beginning of the subsequent Relevant Period. Such ''carried-back'' quota shall be counted against the export limits applicable to the following Relevant Period.

IV. Reference Price

A. CTL plate will not be sold below the reference price. Each grade of CTL plate shall have its own reference price, and all such reference prices shall be calculated in the same manner.

B. The reference price issued quarterly by the Department shall be released by October 1, January 1, April 1, and July 1 of each year and shall be effective on November 1, February 1, May 1, and August 1, respectively. The reference price for the first Relevant Period is set forth in Section IV.C. of this Agreement and shall remain effective until revised by the Department pursuant to this paragraph IV:B. Either party is entitled to request consultations regarding the calculation of reference prices.

C. The reference price for the first Relevant Period shall be as follows:

Grade of CTL plate	Reference price
A36	$359.00 per metric ton.
A572	387.00 per metric ton.
A516	390.00 per metric ton.
API–2H	530.00 per metric ton.

The reference price for API–2Y will be determined at a later date.

Until such time as the Department and MINFER agree upon references prices for other grades of CTL plate, only grades A36, A572, A516, and API–2H may be exported to the United States.

Best efforts will be made by the Department and MINFER to consult for the purpose of establishing references prices for other grades of CTL plate by November 30, 1997.

D. For each subsequent Relevant Period the reference price will be adjusted on a quarterly basis to reflect the change in the BLS Producer Price Index for carbon steel plate for the most recent three months for which data is available preceding the date on which the reference price is issued.

If the last month of BLS PPI for the three-month period preceding the date on which the reference price is issued has fallen by more than 2.6 percent from the average of the first two months of the period the reference price will be adjusted on the basis of the PPI for the last month of the three-month period.

E. MINFER will ensure that with respect to merchandise covered by each Export License, the Ukrainian unit values of imports of CTL plate into the United States will equal or exceed the reference price at equivalent points in the transaction chain. The reference price will be at a level in the transaction chain as far upstream as possible (i.e., F.O.B.). MINFER will ensure that contracts and all relevant documentation will be available to the Department and will be subject to verification.

V. Export License

A. The Government of Ukraine will restrict the volume of direct and indirect exports of CTL plate to the United States by means of Export Licenses. Export Licenses shall be issued by MINFER for all direct and indirect exports of CTL plate to the United States in accordance with the export limits in section III and the reference price in section IV.

B. MINFER shall issue Export Licenses on a first-come-first-serve basis for all Ukrainian producers.

C. Before it issues an Export License, MINFER will ensure that the Relevant Period's export limit is not exceeded and that the price for the CTL plate is at or above the reference price.

D. MINFER shall take action, including the imposition of penalties, as may be necessary to make effective the obligations resulting from the price restrictions, export limits, and Export Licenses. MINFER will inform the Department, in writing, of any violations concerning the price restrictions, export limits, or Export Licenses which come to its attention and the action taken with respect thereto.

The Department will inform MINFER in writing of violations concerning the price restrictions, export limits or Export Licenses which come to its attention and the action taken with respect thereto.

E. Export Licenses will be issued sequentially, endorsed against the export limit for the Relevant Period, and will reference the report of quota allocation results for the appropriate Relevant Period.

F. Export Licenses must contain an English language translation.

G. On and after the effective date of this Agreement, the United States shall require presentation of an Export License as a condition for entry of CTL plate into the United States. The United States will prohibit the entry of any CTL plate not accompanied by an Export License.

H. The validity of Export License shall be six (6) months, except that no more than 90 days shall elapse between the date of issuance of the Export License and the date on which the merchandise is cleared through Ukrainian customs for export.

VI. Implementation

In order to effectively restrict the volume of exports of CTL plate to the United States, the Government of Ukraine agrees to implement the following procedures no later than 90 days after the effective date of this Agreement, except as provided for in VI.A.:

A. Establish, through MINFER, an export licensing program for all exports of CTL plate to, or destined directly or indirectly for consumption in, the United States, as of the effective date of the Agreement.

B. Ensure compliance by any official Ukrainian institution, chamber, or other entities authorized by the Government of Ukraine, all producers, exporters, brokers, and traders of CTL plate, and their affiliated parties, as well as independent trading companies/resellers utilized by the Ukrainian producer to make sales to the United States, with all procedures established in order to effectuate this Agreement.

C. Collect information from all producers, exporters, brokers, and traders of the CTL plate to the United States, and their affiliated parties; as well as independent trading companies/resellers utilized by the Ukrainian producer, on the sale of the CTL plate, and report such information pursuant to Section VIII (A) of this Agreement.

D. The Government of Ukraine, by law, will prohibit direct and indirect exports to the United States of CTL plate except under Export Licenses issued pursuant to Section V.A and impose strict sanctions, such as penalties or prohibition from participation in the export limits allowed by the Agreement, in the event that any Ukrainian or Ukrainian-affiliated party does not comply in full with all terms of the Agreement.

E. Require that purchasers agree: Not to circumvent this Agreement; to report to MINFER any subsequent arrangement entered into for the sale, exchange, or loan to a person or entity in the United States of CTL plate purchased from Ukraine; and to include these same provisions in any subsequent contracts involving CTL plate purchased from Ukraine.

F. Prohibit direct and indirect exports to the United States of CTL plate which is not die-stamped with the mark of the producing mill and which is not marked with Ukraine as the country of origin.

VII. Anticircumvention

A. MINFER will take all appropriate measures under Ukrainian law to prevent circumvention of this Agreement. It shall respond promptly to conduct an inquiry into any and all allegations of circumvention, including allegations raised by the Department, and shall complete such inquiries in a

timely manner (normally within 45 days). MINFER shall notify the Department, in writing, of the results of its inquiries within ten days of the conclusion of such inquiries. Within 15 days of a request from the Department, MINFER shall share with the Department all information received or collected by MINFER regarding its inquiries, its analysis of such information and the results of such inquiries. MINFER will require all exporters of CTL plate to include a provision in their contracts for sales to countries other than the United States that the CTL plate sold through such contracts cannot be re-exported, transhipped, or swapped to the United States, or otherwise used to circumvent the export limits of this Agreement. MINFER will also establish appropriate mechanisms to enforce this requirement.

B. MINFER of Ukraine shall advise within one month after the effective date of this Agreement that all contracts for sales of CTL plate to third countries by Ukrainian producers/exporters shall include a clause which stipulates the following: that in the event that their customer sells the merchandise to another trading company it must provide the identity of the subsequent trading company to MINFER.

Given the critical need to prevent circumvention, both Governments agree to share information to the greatest extent their national legislation will allow. Therefore, MINFER agrees to use its maximum efforts to provide transaction specific data for all third country sales to the final end-user.

C. If, in an inquiry pursuant to paragraph A, MINFER determines that a Ukrainian company has participated in a transaction that resulted in circumvention of the export limits of this Agreement, then MINFER shall impose penalties on such company including, but not limited to, denial of access to the CTL plate quota. Additionally, MINFER shall deduct an amount of CTL plate equivalent to the amount involved in such circumvention from the export limit and shall immediately notify the Department, in writing, of the amount deducted. If sufficient tonnage is not available in the current Relevant Period, then the remaining amount necessary shall be deducted from the subsequent Relevant Period.

D. If MINFER determines that a company from a third country has circumvented the Agreement and the parties agree that no Ukrainian entity participated in or had knowledge of such activities, then the parties shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on the appropriate steps to be taken to eliminate such circumvention, such as MINFER prohibiting sales of Ukrainian CTL plate to the company responsible or reducing CTL plate exports to the country in question. If the parties are unable to reach a mutual agreement within 45 days, then the Department may take appropriate action, such as deducting the amount of CTL plate involved in such circumvention from the export limit, or instructing Customs to deny entry to any CTL plate sold by the entity found to be circumventing the Agreement, taking into account all relevant factors. Before taking such action, the Department will notify MINFER of the facts and the reasons constituting the basis for the Department's intended action and will afford MINFER ten days in which to comment.

E. If the Department determines that a Ukrainian/ or third country entity participated in circumvention, the parties shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on an appropriate resolution of the problem. If the parties are unable to reach mutual agreement within 45 days, the Department may take appropriate action, such as deducting the amount of CTL plate involved in such circumvention from the export limit, or instructing Customs to deny entry to any CTL plate sold by the entity found to be circumventing the Agreement. Before taking such action, the Department will notify MINFER of the facts and reasons constituting the basis for the Department's intended action and will afford MINFER ten days in which to comment.

F. The Department shall direct the U.S. Customs Service to require all importers of CTL plate into the United States, regardless of stated country of origin, to submit at the time of entry a written statement certifying that the CTL plate being imported was not obtained under any arrangement, swap, or other exchange which would result in the circumvention of the export limits established by this Agreement. Where the Department has reason to believe that such a certification has been made falsely, the Department will refer the matter to U.S. Customs or the U.S. Department of Justice for further action.

G. Given the fungibility of the world steel market, the Department will take the following factors into account in distinguishing normal steel market arrangements, swaps, or other exchanges from arrangements, swaps, or other exchanges which would result in the circumvention of the export limits established by this Agreement:

1. Existence of any verbal or written arrangements which would result in the circumvention of the export limits established by this Agreement;

2. Existence of any arrangement as defined in Section III.E that was not reported to the Department pursuant to Section VIII.A;

3. Existence and function of any subsidiaries or affiliates of the parties involved:

4. Existence and function of any historical and/or traditional trading patterns among the parties involved;

5. Deviations (and reasons for deviation) from the above patterns, including physical conditions of relevant steel producing facilities;

6. Existence of any payments unaccounted for by previous or subsequent deliveries, of any payments to one party for merchandise delivered or swapped by another party;

7. Sequence and timing of the arrangements; and

8. Any other information relevant to the transaction or circumstances.

H. ''Swaps'' include, but are not limited to:

Ownership swaps—involve the exchange of ownership of any type of CTL plate product(s),without physical transfer. These may include exchange of ownership of CTL plate products in different countries, so that the parties obtain ownership of products located in different countries; or exchange of ownership of CTL plate products produced in different countries so that the parties obtain ownership of products of different national origin.

Flag swaps—involve the exchange of indicia of national origin of CTL plate products without any exchange of ownership.

Displacement swaps—involve the sale or delivery of any type of steel product(s) from Ukraine to an intermediary country (or countries) which can be shown to have resulted in the ultimate delivery or sale into the United States of displaced CTL plate products of any type, regardless of the sequence of the transaction.

I. The Department will enter its determinations regarding circumvention into the record of the Agreement.

VIII. Monitoring

MINFER will provide to the Department such information as is necessary and appropriate to monitor the implementation of and compliance with the terms of this Agreement. The Department shall provide semi-annual reports to MINFER indicating the volume of imports of the CTL plate to

the United States, together with such additional information as is necessary and appropriate to monitor the implementation of this Agreement.

A. Reporting of Data

Beginning on the effective date of this Agreement, MINFER shall collect and provide to the Department the information set forth, in the agreed format, in the Appendix to this Agreement. All such information will be provided to the Department by the 15th of each month for exports to the United States occurring during the previous month. For exports to countries other than the United States and for home market sales, all such information will be provided to the Department by May 30 of each year for exports and home market sales during the period November 1 through April 30, and by November 30 of each year for exports and sales during May 1 through October 31, or within 90 days of a request made by the Department. All information will be subject to the verification provision identified in Section VIII.C of this Agreement. MINFER agrees to allow sales of CTL plate only through those brokers and trading companies which permit verification and full reporting of data. The Department may disregard any information submitted after the deadlines set forth in this Section or any information which it is unable to verify to its satisfaction.

Aggregate quantity and value of exports by HTS category to each third country will be provided to the Department by July 30 of each year for exports during the period November 1 through April 30 and by January 31 of each for exports during period May 1 through October 31.

Transaction-specific data for all third country sales will also be reported on the schedule provided above in the format provided in the Appendix. However, if the Department concludes that transaction-specific data is not necessary for a given period, it will notify MINFER at least 90 days before the reporting deadline that transaction-specific sales data need not be reported. If the Department determines that such data is relevant in connection with Section VII and requests information on transactions for one or more third countries during a period for which the Department waived complete reporting, MINFER will provide the data listed in the Appendix for those specific transactions within 90 days of the request.

MINFER will also report transaction-specific data for home market sales as specified in the Appendix to this Agreement.

Both governments recognize that effective monitoring of this Agreement may require that MINFER provide information additional to that which is identified above. Accordingly, the Department may establish additional reporting requirements, as appropriate, during the course of this Agreement. The Department shall provide notice to MINFER of any additional reporting requirements no later than 45 days prior to the period covered by such reporting requirements unless a shorter notice period is mutually agreed.

B. Other Sources for Monitoring

The Department will review publicly-available data as well as Customs Form 7501 entry summaries and other financial import data from the Bureau of the Census, on a monthly basis, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

The Department will monitor Bureau of the Census IM–115 computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the producer/exporter which may be responsible for such sales, the Department may request the U.S. Customs Service to provide such information. The Department may request other additional documentation from the U.S. Customs Service.

The Department may also request the U.S. Customs Service to direct ports of entry to forward an Antidumping Report of Importations for entries of the CTL plate during the period this Agreement is in effect.

C. Verification

MINFER will permit full verification of all information affiliated to the administration of this Agreement, including verification of the Ukrainian producer and the trading companies/brokers utilized in making sales/shipments to the United States, on an annual basis or more frequently, as the Department deems necessary to ensure that the Government of Ukraine is in full compliance with the terms of the Agreement. Such verifications may take place in association with scheduled consultations whenever possible.

IX. Disclosure and Comment

A. The Department shall make available to representatives of each party to the proceeding under appropriately-drawn administrative protective orders consistent with the Department's Regulations business proprietary information submitted to the Department semi-annually or upon request, and in any administrative review of this Agreement.

B. Not later than 30 days after the date of disclosure under Section VII.A, the parties to the proceeding may submit written comments to the Department, not to exceed 30 pages.

C. During the anniversary month of this Agreement, each party to the proceeding may request a hearing on issues raised during the preceding Relevant Period. If such a hearing is requested, it will be conducted in accordance with Section 751 of the Act (19 U.S.C. 1675) and applicable regulations.

X. Consultations

MINFER and the Department shall hold consultations regarding matters concerning the implementation, operation, including the calculation of reference prices, and/or enforcement of this Agreement. Such consultations will be held each year during the anniversary month of this Agreement. Additional consultations may be held at any other time upon request of either MINFER or the Department.

XI. Violations of the Agreement

A. Violation

''Violation'' means noncompliance with the terms of this Agreement caused by an act or omission, in accordance with Section 353.19 of the Department's Regulations. Each party will inform the other party of any violations of the Agreement which come to their attention and the action taken with respect thereto.

Prior to making a determination of an alleged violation, the Department will engage in emergency consultations. Such consultations shall begin no later than 14 days from the day of request and shall provide for full review, but in no event will exceed 30 days. After consultations, the Department will provide MINFER 20 days within which to provide comments. The Department will make a determination within 30 days of the date established for submission of comments by MINFER.

B. Appropriate Action

If the Department determines that this Agreement is being or has been violated the Department will take such action as it determines is appropriate under 734(i) of the Act and Section 353.19 of the Department's Regulations.

XII. Duration

The export limit provided for in Section III of this Agreement shall remain in force from the effective date of this Agreement through November 1, 2002.

The Department will, upon receiving a proper request no later than November 1, 2001, conduct an administrative review under Section 751 of the Act. The Department expects to terminate this Agreement and the underlying investigation no later than November 1, 2002, provided that Ukraine has not been found to have violated the Agreement in any substantive manner. Such review and termination shall be conducted consistent with Section 353.25 of the Department's Regulations.

The Government of Ukraine may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination at the request of MINFER, the provisions of Section 734(i) of the Act shall apply.

XIII. Conditions

The Department recognizes that it may determine during the life of this Agreement that the Ukrainian CTL plate industry is a market-oriented industry, or that Ukraine is a market economy country. In either event, the Department may:

(a) Enter into a new suspension agreement under section 734(b) or 734(c) of the Act: or

(b) If the investigation was not completed under section 353.18(i) of the Department's regulations, afford MINFER a full opportunity to submit new information, and take such information into account in reaching its final determination—provided that all parties to the proceeding are given a full opportunity to submit factual information and argument in rebuttal; or

(c) If the investigation was completed under section 353.18(i), consider a request made no later than 30 days after termination of the Agreement to conduct a changed circumstances review under section 751 (b).

XIV. Other Provisions

A. In entering into this Agreement. MINFER does not admit that any sales of the merchandise subject to this Agreement have been made at less than fair value or that such sales have materially injured or threatened material injury to, an industry or industries in the United States.

B. The Department finds that this Agreement is in the public interest; that effective monitoring of this Agreement by the United states is practicable; and that this Agreement will prevent the suppression or undercutting of price levels of United States domestic CTL plate products by imports of the merchandise subject to this Agreement.

C. The Department does not consider any of the obligations concerning exports of CTL plate to the United States undertaken by MINFER pursuant to this Agreement relevant to the question of whether firms in the underlying investigation would be entitled to separate rates, should the investigation be resumed for any reason.

D. The English language version of this Agreement shall be controlling.

E. For all purposes hereunder, the Department and the signatory Government of Ukraine shall be represented by, an all communications and notices shall be given and addressed to:

Department of Commerce

U.S. Department of Commerce, Assistant Secretary for Import Administration, International Trade Administration, Washington, DC 20230

Government of Ukraine

Ministry of Foreign Economic Relations and Trade of Ukraine, 8 Livivska Square, Kiev, GSP. 655,254655, Ukraine

XV. Effective Date

The effective date of this Agreement suspending the antidumping investigation on CTL plate from Ukraine shall be October 24, 1997.

Signed on this 24 day of October, 1997.

For the U.S. Department of Commerce.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

For the Government of Ukraine.

Sergei Gryshchenko,

Deputy Minister for Ministry of Industrial Policy.

Appendix

In accordance with the established format, MINFER shall collect and provide to the Department all information necessary to ensure compliance with this Agreement. This information will be provided to the Department on a semi-annual basis, or upon request.

MINFER will collect and maintain data on exports to the United States and to countries other than the United States, on a continuous basis and provide the prescribed information to the Department.

MINFER will report home market sales for those companies which represent substantially all of domestic production of CTL plate. For these companies, MINFER will report all home market sales of CTL plate for those grades listed in Section IV. C. Of the Agreement.

MINFER will provide a narrative explanation to substantiate all data collected in accordance with the following formats.

A. Report of Inventories

Report by location, the inventories of CTL plate held by an Ukrainian legal entity in the United States and imported into the United States during the period November 5, 1996, through the effective date of the Agreement.

1. Quantity: Indicate original units of measure (metric tons).
2. Location: Identify where the inventory is currently being held. Provide the name and address for the location.
3. Titled Party: Name and address of party who legally has beneficial title to the merchandise.
4. Contract Registration Number: Indicate the number(s) relating to each entry now being held in inventory.
5. Export License Number: Indicate the number(s) relating to each sale or entry.
6. Date of Original Export: Date the Export License is issued.
7. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
8. Original Importer: Name and address.
9. Original Exporter: Name and address
10. Complete Description of Merchandise: Include heat numbers, HTS number, physical description, ASTM specification, and other available information.

B. Exports to the United States

MINFER will provide all Export Licenses issued to Ukrainian entities which shall contain the following information with the exception that information requested in item #9, date of entry, item 10, importer of record, and item #16, final destination may be omitted if unknown to MINFER and the licensee.

1. Export License Number(s): Indicate the number(s) relating to each sale and/or entry.
2. Complete Description of Merchandise: Include the 10 digit HTS category, and the ASTM or equivalent grade.
3. Quantity: Indicate in metric tons.
4. F.O.B. Sales Value: Indicate currency used.
5. Unit Price: Indicate per metric ton.
6. Date of Sale: The date all essential terms of order (i.e., price and quantity) become fixed.
7. Sales Order Number (s): Indicate the specification number/order number relating to each sale and/or shipment.
8. Date of Export: Date the export license is issued.
9. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
10. Importer of Record: Name and address.
11. Trading Company: Name and address of trading company involved in sale.
12. Customer: Name and address of the first unaffiliated party purchasing from the Ukrainian producer/exporter.
13. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated to the Ukrainian producer/ exporter.
14. Remaining Export Limit: Indicate the remaining export limit available to the Ukrainian producers during the Relevant Period.
15. Final Destination: The complete name and address of the end-user.

Customer Certification

MINFER shall ensure that all customers of the CTL plate shall certify that the merchandise imported into-the United States pursuant to this Agreement shall not be loaned or swapped.

Mill Certification

MINFER shall ensure that all shipments of CTL plate exported to the United States pursuant to this Agreement, shall be accompanied by a copy of the original mill certification, which includes the heat number(s).

C. Sales to Countries Other Than the United States

Pursuant to Section VIII, paragraph A, MINFER will provide country-specific volume and value information for all exports of CTL plate to third countries.

1. Customs Export Declaration Number: Indicates the number(s) related to each shipment.
2. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
3. Date of Sale: The date all essential terms of the order (i.e., price and quantity) become fixed.
4. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
5. Date of Export: Date of Export Certification is issued.
6. Importer of Record: Name and address.
7. Customer: Name and address of the first unaffiliated party purchasing from the Ukrainian producer/exporter.
8. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
9. Name of Vessel: Identity of the name of vessel for each shipment to third countries.
10. Other: The identity of any subsequent trading company in the transaction chain pursuant to Section VII.B.
11. Estimated Date of Entry: Date the merchandise entered the third country or the date a book transfer took place.

D. Home Market Sales

Pursuant to Section VIII.A., MINFER will provide home market sales data for those companies which represent substantially all of domestic production of CTL plate. For these companies, the MINFER will report all home market sales of CTL plate for those grades listed in Section IV. C. Of the Agreement.

1. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
2. Date of Sale: The date all essential terms of the order (i.e., price and quantity become fixed.
3. Sales Order Number(s): Indicate the number(s) relating to each sale.
4. Customer: Name and address of the first unaffiliated party purchasing from the Ukrainian producer.
5. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–849]

Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China

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

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping investigation on cut-to-length carbon steel plate from the People's Republic of China (PRC). The basis for the suspension is an agreement by the Government of the PRC to restrict the volume of direct and indirect exports to the United States of cut-to-length carbon steel plate from all PRC producers/exporters and to revise its prices to eliminate completely sales of this merchandise to the United States at less than fair value.

EFFECTIVE DATE: October 24, 1997.

FOR FURTHER INFORMATION CONTACT: Edward Yang, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3910.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1996, the Department initiated an antidumping investigation under section 732 of the Tariff Act of 1930, (the Act), as amended, to determine whether imports of CTL plate from the People's Republic of China are being or are likely to be sold in the United States at less than fair value (61 FR 64051 (December 3, 1996)). On December 19, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary threat of injury determination (see ITC Investigation Nos. 731–TA–756). On June 11, 1997, the Department preliminarily determined that CTL plate is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (62 FR 31958, (June 11, 1997)).

The Department and the People's Republic of China initialed a proposed agreement suspending this investigation on September 24, 1997. On September 25, 1997, we invited interested parties to provide written comments on the agreement and received comments from Geneva Steel, Gulf States Steel, Bethlehem Steel Corp., U.S. Steel Group, United Steel Workers of America, Liaoning, Anshan, Bao Steel, Shanghai Pudong and WISCO.

The Department and the Government of the People's Republic of China signed the final suspension agreement on October 24, 1997.

Scope of the Investigation

See Notice of *Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* signed on October 24, 1997.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with Section 734 (l) of the Act, we have determined that the agreement will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation, that the agreement is in the public interest, and that the agreement can be monitored effectively. *See Public Interest Memorandum,* dated October 24, 1997. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(l) of the Act have been met. The terms and conditions of this Agreement, signed October 24, 1997, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries of cut-to-length carbon steel plate from the People's Republic of China entered or withdrawn from warehouse, for consumption, as directed in our notice of ''Preliminary Determination of Sales at Less Than Fair Value: Cut-to-Length Carbon Steel Plate from the People's Republic of China'' and ''Postponement of the Final Determination: Cut-to-Length Carbon Steel Plate from the People's Republic of China'' is hereby terminated. Any cash deposits on entries of cut-to-length carbon steel plate from the People's Republic of China pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

On October 14, 1997, we received a request from petitioners requesting that we continue the investigation. We received separate requests for continuation from Bethlehem Steel Corp., U.S. Steel Corp. (A Unit of USX Corporation), and the United Steelworkers of America, interested parties under section 771(9)(D) of the Act. Pursuant to these requests, we have

completed the investigation in accordance with section 734(g) of the Act, and have notified the International Trade Commission (ITC) of our determination. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated (*See* section 734(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue an antidumping duty order as long as the suspension agreement remains in force (*See* section 734(f)(3)(B) of the Act).

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: November 7, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Annex 1—Agreement Suspending the Antidumping Investigation on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China

For purposes of encouraging free and fair trade in certain cut-to-length carbon steel plate (CTL plate), establishing more normal market relations, and preventing the suppression or undercutting of price levels of the domestic products by imports of the merchandise subject to this Agreement, the United States Department of Commerce (''the Department'') and the Government of the People's Republic of China enter into this suspension agreement (''the Agreement'').

Pursuant to this Agreement, the Government of the People's Republic of China will restrict the volume of direct and indirect exports to the United States of CTL plate from all Chinese producers/exporters, subject to the terms and provisions set forth below. For any of the deadlines mentioned in this Agreement, the Ministry of Foreign Trade and Economic Cooperation (''MOFTEC'') may request an extension which will be considered by the Department if it is received in writing prior to the deadline in question and includes reasons for the extension.

On the basis of this Agreement, pursuant to the provisions of Section 734(1) of the Tariff Act of 1930, as amended, by the Uruguay Round Agreements Act, as effective on January 1, 1995 (''the Act'') (19 U.S.C. 1673c(1)), the Department shall suspend its antidumping investigation with respect to CTL plate produced in the People's Republic of China, subject to the terms and provisions set forth below. Further, the Department will instruct the U.S. Customs Service (''Customs'') to terminate the suspension of liquidation of, and release any cash deposit or bond posted on, CTL plate covered by this Agreement as of the effective date of this Agreement.

I. Definitions

For purposes of this Agreement, the following definitions apply:

A. ''Date of Export'' for imports of CTL plate into the United States shall be considered the date the export license was issued.

B. ''Parties to the Proceeding'' means any interested party, within the meaning of section 353.2(k) of the Department's Regulations, which actively participates through written submissions of factual information or written argument.

C. ''Indirect Exports'' means arrangements as defined in Section III.E of this Agreement and exports from the People's Republic of China through one or more third countries, whether or not such exports are further processed, insofar as they remain within the scope of the Agreement, and includes further processing which results in minor alterations, or under certain limited circumstances, as described in Section VII. G., further processing which results in substantial transformation as a result of an attempt to circumvent the Agreement, whether or not such exports are sold in one or more third countries prior to importation into the United States and whether or not the Chinese producer knew the product was destined to enter the United States.

D. For purposes of this Agreement, ''United States'' shall comprise the customs territory of the United States of America (the 50 States, the District of Colombia and Puerto Rico) and foreign trade zones located in the territory of the United States of America.

E. ''For Consumption'' means all CTL plate sold to customers, such as, trading companies, distributors, resellers, end-users, or service centers.

F. Customer means an entity, such as a steel service center, reseller, trading company, end-user, etc., which consumes CTL plate as defined in Section I.E.

G. ''Date of Sale'' is defined as the date on which price and quantity become firm, e.g., the specification date or, in the case of a long-term contract, the date of contract, as recorded in the company's records kept in the ordinary course of business.

H. ''Export License'' is the document issued by the Ministry of Foreign Trade and Economic Cooperation (''MOFTEC'') which must accompany all shipments of CTL plate from the People's Republic of China to the United States, and must contain all of the information enumerated in the Appendix to this Agreement, except that the categories Date of Entry, Importer of Record, Final Destination, and Other may be omitted if unknown to the MOFTEC and the licensee. An export license shall be required for customs clearance into the United States.

I. ''Reference Price'' means the price calculated by the Department, as described in Section IV, on a quarterly basis to be used as a floor price for sales of Chinese CTL plate into the United States.

J. ''Relevant Period'' for the export limits of the Agreement means the period November 1, through October 31 of each year that the Agreement is in effect.

II. Product Coverage

The products covered by this Agreement include hot-rolled iron and non-alloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this Agreement are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive.

Specifically excluded from subject merchandise within the scope of this Agreement is grade X–70 steel plate.

III. Export Limit

A. The export limit for CTL plate for the first Relevant Period shall be 150,000 metric tons. Until such time as reference prices are agreed to for other grades, only grade A36 may be exported. Of this export limit, not more than 25,000 metric tons may be utilized in selling CTL plate which is 0.375 inches or less in actual or nominal thickness, and not more than 25,000 metric tons may be utilized in selling CTL plate which is three inches or more in actual or nominal thickness. No later than 60 days prior to the end of the first Relevant Period, the Department shall calculate an upward or downward adjustment to the next Relevant Period's quota based upon changes in U.S. apparent consumption for steel plate. U.S. apparent consumption will be calculated using official statistics from the U.S. Census Bureau and data from the American Iron and Steel Institute regarding domestic shipments. The maximum adjustment will be plus or minus no more than 6 percent per Relevant Period, and will be calculated by comparing the most recent twelve months of data for U.S. apparent consumption available to the Department at the time of the calculation to the level of the previous corresponding twelve months of data. The Department will then apply the adjustment to the Relevant Period's export limit. The Department will similarly adjust the export limit every Relevant Period, and the effects of the adjustment will be cumulative. Deductions from the export limits shall be made based on the ''Date of Export'', as defined in Section I. No more than sixty percent of the export limit for any Relevant Period may be licensed during each half (six-month period) within a given Relevant Period.

B. On and after the effective date of this Agreement, the Government of the People's Republic of China will restrict the volume of direct and indirect exports of CTL plate to the United States, and the transfer and withdrawal from inventory of CTL plate (consistent with the provisions of Section III.D), in accordance with the export limits then in effect.

C. Export licenses may not be issued for more than the entire amount of quota allocated in any given Relevant Period. Any CTL plate exported during a Relevant Period shall not when cumulated with all prior exports in such Relevant Period exceed the export limit for that Relevant Period.

D. Any inventories of CTL plate currently held in the United States by a Chinese legal entity and imported into the United States between November 5, 1996 and the effective date of this Agreement will be subject to the following conditions:

1. Such inventories will not be transferred or withdrawn from inventory for consumption in the United States without an Export License issued by MOFTEC. Any such transfers or withdrawals from inventory shall be deducted from the export limits in effect at the time the Export License is issued.

2. A request for an Export License under this provision shall be accompanied by a report containing the information set forth in the Appendix to this Agreement.

E. Any arrangement involving the exchange, sale, or delivery of CTL plate products from the People's Republic of China, whether or not further processed, to the degree it results in the sale or delivery in the United States of CTL plate from a country other than the People's Republic of China, is subject to the requirements of Section V and will be counted toward the export limits. Any such transaction that does not comply with the requirements of Section V will be deducted from the export limits pursuant to Section VII.

F. Where CTL plate is imported into the United States and is subsequently re-exported or re-packaged and re-exported, the export limits shall be increased by the quantity of product re-exported. Such increase will be applicable to the Relevant Period corresponding to the time of such re-export. Such increase will be applied only after the Department receives, and has the opportunity to verify, evidence demonstrating original importation, any re-packaging, and subsequent exportation. The re-exported material must be identical to the imported material.

G. Export Licenses for a given Relevant Period may not be issued after the expiration of the Relevant Period, except that Export Licenses not so issued may be issued during the first three months of the following Relevant Period, up to a maximum of 15 percent of the export limit for that following Relevant Period. Such ''carried-over'' quota shall be counted against the export limits applicable to the previous Relevant Period.

Export Licenses for up to 15 percent of the export limits for a subsequent Relevant Period may be issued as early as 45 days prior to the beginning of the subsequent Relevant Period. Such ''carried-back'' quota shall be counted against the export limits applicable to the following Relevant Period.

H. For the first 90 days after the effective date of this Agreement, CTL plate shall be admitted into the United States with a temporary Export License.

The volume of any such imports will be deducted from the export limits applicable to the first Relevant Period. A full reporting of any such imports, which must correspond to the United States sales information detailed in the Appendix to this Agreement, must be submitted to the Department no later than 30 days after the conclusion of the 90 day period. This data must be sorted on the basis of date of export and must be set forth on a transaction-specific basis.

IV. Reference Price

A. CTL plate will not be sold below the reference price on the date of sale. Each grade of CTL plate shall have its own reference price, and all such reference prices shall be calculated in the same manner.

B. The reference price issued quarterly by the Department shall be released by October 1, January 1, April 1, and July 1 of each year and shall be effective on November 1, February 1, May 1, and August 1, respectively. The reference price for the first Relevant Period is set forth in Section IV.C. of this Agreement and shall remain effective until revised by the Department pursuant to this paragraph IV.B. Either party is entitled to request consultations regarding the calculation of reference prices.

C. The reference price for the first Relevant Period shall be as follows:

Grade of CTL plate	Reference price
A36	$350.00 per metric ton.

D. For each subsequent Relevant Period, the reference price will be adjusted on a quarterly basis to reflect the change in the BLS Producer Price Index for carbon steel plate for the most recent three months for which data is available preceding the date on which the reference price is issued. If the last month of the BLS PPI for carbon steel plate for the three-month period preceding the date on which the reference price is issued has fallen by more than 2.6 percent from the average of the first two months of the quarter, the reference price will be adjusted on the basis of the BLS PPI for carbon steel plate for the last month of the three-month period.

E. MOFTEC will ensure that, with respect to merchandise covered by each

Export License, the Chinese unit values of imports of CTL plate into the United States will equal or exceed the reference price at equivalent points in the transaction chain. The reference price will be at a level in the transaction chain as far upstream as possible (i.e., F.O.B Chinese ocean port, (excluding Hong Kong)). MOFTEC will ensure that contracts and all relevant documentation will be available to the Department and will be subject to verification.

F. CTL plate imported after the effective date of the Agreement, exported from the People's Republic of China prior to October 24, 1997 and sold pursuant to a contract in effect on or before August 31, 1997, in which the price to the first unrelated purchaser in the United States is fixed at a specific and definite amount with respect to the import at issue, shall not be subject to reference price restrictions. Consistent with Section III.H, the volume of such imports shall be deducted from the export limits.

V. Export License

A. MOFTEC will restrict the volume of direct and indirect exports of CTL plate to the United States by means of annual quota allocations and Export Licenses. Export Licenses shall be issued by MOFTEC for all direct and indirect exports of CTL plate to the United States in accordance with the export limits in section III and the reference price in section IV.

B. Thirty days following the annual allocation of quota rights for any Relevant Period, MOFTEC shall provide to the Department a written report identifying each quota recipient and the volume of quota which each recipient has been accorded (''report of quota allocation results''). MOFTEC may reallocate the volume of quota among quota recipients without prior approval from the Department, but must inform the Department in writing within thirty days of such reallocation.

C. Before it issues an Export License, MOFTEC will ensure that the Relevant Period's export limit is not exceeded and that the price for the CTL plate is at or above the reference price on the date of sale. The quantity specified on each export license may vary up to ten percent above or below the quantity actually shipped under that license. MOFTEC, however, will ensure that the total amount of CTL plate shipped under such licenses does not exceed the export limit for the Relevant Period.

D. MOFTEC shall take action, including the imposition of penalties, as may be necessary to make effective the obligations resulting from the price restrictions, export limits, and Export Licenses. MOFTEC will inform the Department, in writing, of any violations concerning the price restrictions, export limits, or Export Licenses which come to its attention and the action taken with respect thereto.

The Department will inform MOFTEC in writing of violations concerning the price restrictions, export limits, and/or Export Licenses which come to its attention and the action taken with respect thereto.

E. Export Licenses will be issued sequentially, endorsed against the export limit for the Relevant Period, and will reference the report of quota allocation results for the appropriate Relevant Period.

F. Export Licenses must be issued no earlier than 90 days before the day on which the merchandise is accepted by a transportation company, as indicated in the bill-of-lading or a comparable transportation document, for export. Export Licenses must contain an English language translation.

G. On and after the effective date of this Agreement, the United States shall require presentation of an Export License as a condition for entry of CTL plate into the United States. The United States will prohibit the entry of any CTL plate not accompanied by an Export License.

H. For purposes of this Agreement, the duration of the validity of the Export License will be a period of 180 days.

VI. Implementation

In order to effectively restrict the volume of exports of CTL plate to the United States, MOFTEC agrees to implement the following procedures no later than 90 days after the effective date of this Agreement.

A. Establish, through MOFTEC, an export licensing program for all exports of CTL plate to, or destined directly or indirectly for consumption in, the United States.

B. Ensure compliance by any official Chinese institution, chamber, or other entities authorized by the Government of the People's Republic of China, all producers, exporters, brokers, and traders of CTL plate, and their affiliated parties, as well as independent trading companies/resellers utilized by the Chinese producer to make sales to the United States, with all procedures established in order to effectuate this Agreement.

C. Collect information from all producers, exporters, brokers, and traders of the CTL plate to the United States, and their affiliated parties; as well as independent trading companies/resellers utilized by the Chinese producer, on the sale of the CTL plate, and report such information pursuant to Section VIII(A) of this Agreement.

D. Prohibit, by law, direct and indirect exports to the United States of CTL plate except under Export Licenses issued pursuant to Section V.A and impose strict sanctions, such as penalties or prohibition from participation in the export limits allowed by the Agreement, in the event that any Chinese or Chinese-affiliated party does not comply in full with all terms of the Agreement.

E. Require that purchasers agree: not to circumvent this Agreement; to report to MOFTEC any subsequent arrangement(s) entered into for the sale, exchange, or loan to a person or entity in the United States of CTL plate purchased from the People's Republic of China; and to ensure that these same provisions are included in any subsequent contracts involving CTL plate purchased from the People's Republic of China.

F. Prohibit direct and indirect exports to the United States of CTL plate which is not die-stamped with the mark of the producing mill and which is not marked with the People's Republic of China as the country of origin.

VII. Anticircumvention

A. MOFTEC will take all appropriate measures under Chinese law to prevent circumvention of this Agreement. It shall respond promptly to conduct an inquiry into any and all allegations of circumvention, including allegations raised by the Department, and shall complete such inquiries in a timely manner (normally within 45 days). MOFTEC shall notify the Department, in writing, of the results of its inquiries within ten days of the conclusion of such inquiries. Within 15 days of a request from the Department, MOFTEC shall share with the Department all information received or collected by MOFTEC regarding its inquiries, its analysis of such information and the results of such inquiries. MOFTEC will require all exporters of CTL plate to include a provision in their contracts for sales to countries other than the United States that the CTL plate sold through such contracts cannot be re-exported, transhipped, or swapped to the United States, or otherwise used to circumvent the export limits of this Agreement. MOFTEC will also establish appropriate mechanisms to enforce this requirement.

B. MOFTEC shall advise within one month after the effective date of this Agreement that all contracts for sales of CTL plate to third countries by Chinese

producers/exporters shall include a clause which stipulates the following: that in the event that their customer sells the merchandise to another trading company it must provide the identity of the subsequent trading company to the Government of the People's Republic of China.

Given the critical need to prevent circumvention, both Governments agree to share information to the greatest extent their national legislation will allow. Therefore, MOFTEC agrees to use its maximum efforts to provide transaction specific data for all third country sales to the final end-user.

C. If, in an inquiry pursuant to paragraph A, MOFTEC determines that a Chinese company has participated in a transaction that resulted in circumvention of the export limits of this Agreement, then MOFTEC shall impose penalties on such company including, but not limited to, denial of access to the CTL plate quota. Additionally, MOFTEC shall deduct an amount of CTL plate equivalent to the amount involved in such circumvention from the export limit and shall immediately notify the Department, in writing, of the amount deducted. If sufficient tonnage is not available in the current Relevant Period, then the remaining amount necessary shall be deducted from the subsequent Relevant Period.

D. If MOFTEC determines that a company from a third country has circumvented the Agreement and the parties agree that no Chinese entity participated in or had knowledge of such activities, then the parties shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on the appropriate steps to be taken to eliminate such circumvention, such as MOFTEC prohibiting sales of Chinese CTL plate to the company responsible or reducing CTL plate exports to the country in question. If the parties are unable to reach a mutual agreement within 45 days, then the Department may take appropriate action, such as deducting the amount of CTL plate involved in such circumvention from the export limit, or instructing Customs to deny entry to any CTL plate sold by the entity found to be circumventing the Agreement, taking into account all relevant factors. Before taking such action, the Department will notify MOFTEC of the facts and the reasons constituting the basis for the Department's intended action and will afford MOFTEC ten days in which to comment.

E. If the Department determines that a Chinese or third country entity participated in circumvention, the parties shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on an appropriate resolution of the problem. If the parties are unable to reach mutual agreement within 45 days, the Department may take appropriate action, such as deducting the amount of CTL plate involved in such circumvention from the export limit, or instructing Customs to deny entry to any CTL plate sold by the entity found to be circumventing the Agreement. Before taking such action, the Department will notify MOFTEC of the facts and reasons constituting the basis for the Department's intended action and will afford MOFTEC ten days in which to comment.

F. The Department shall direct the U.S. Customs Service to require all importers of CTL plate into the United States, regardless of stated country of origin, to submit at the time of entry a written statement certifying that the CTL plate being imported was not obtained under any arrangement, swap, or other exchange which would result in the circumvention of the export limits established by this Agreement. Where the Department has reason to believe that such a certification has been made falsely, the Department will refer the matter to Customs or the Department of Justice for further action.

G. Given the fungibility of the world steel market, the Department will take the following factors into account in distinguishing normal steel market arrangements, swaps, or other exchanges from arrangements, swaps, or other exchanges which would result in the circumvention of the export limits established by this Agreement:

1. Existence of any verbal or written arrangements which would result in the circumvention of the export limits established by this Agreement;

2. Existence of any arrangement as defined in Section III.E that was not reported to the Department pursuant to Section VIII.A;

3. Existence and function of any subsidiaries or affiliates of the parties involved;

4. Existence and function of any historical and/or traditional trading patterns among the parties involved;

5. Deviations (and reasons for deviation) from the above patterns, including physical conditions of relevant steel producing facilities;

6. Existence of any payments unaccounted for by previous or subsequent deliveries, or any payments to one party for merchandise delivered or swapped by another party;

7. Sequence and timing of the arrangements; and

8. Any other information relevant to the transaction or circumstances.

H. ''Swaps'' include, but are not limited to:

Ownership swaps—involve the exchange of ownership of any type of CTL plate product(s), without physical transfer. These may include exchange of ownership of CTL plate products in different countries, so that the parties obtain ownership of products located in different countries; or exchange of ownership of CTL plate products produced in different countries, so that the parties obtain ownership of products of different national origin.

Flag swaps—involve the exchange of indicia of national origin of CTL plate products, without any exchange of ownership.

Displacement swaps—involve the sale or delivery of any type of steel product(s) from the People's Republic of China to an intermediary country (or countries) which can be shown to have resulted in the ultimate delivery or sale into the United States of displaced CTL plate products of any type, regardless of the sequence of the transaction. Two years after the effective date of this Agreement, this provision with regard to displacement swaps will cease to exist unless the Department determines that there has been evidence of displacement swaps during the preceding two years.

I. The Department will enter its determinations regarding circumvention into the record of the Agreement.

VIII. Monitoring

MOFTEC will provide to the Department such information as is necessary and appropriate to monitor the implementation of and compliance with the terms of this Agreement. The Department shall provide semi-annual reports to MOFTEC indicating the volume of imports of the CTL plate to the United States, together with such additional information as is necessary and appropriate to monitor the implementation of this Agreement.

A. Reporting of Data

Beginning on the effective date of this Agreement, MOFTEC shall collect and provide to the Department the information set forth, in the agreed format, in the Appendix to this Agreement. All such information will be provided to the Department by May 30 of each year for exports and aggregate home market sales during the period November 1 through April 30, and by November 30 of each year for exports during the period May 1 through October 31, or within 90 days of a

request made by the Department. MOFTEC agrees to provide transaction-specific information for home market sales upon demand, within 30 days of a request made by the Department. Such information will be subject to the verification provision identified in Section VIII.C of this Agreement. MOFTEC agrees to allow sales of CTL plate only through those brokers and trading companies which permit verification and full reporting of data. The Department may disregard any information submitted after the deadlines set forth in this Section or any information which it is unable to verify to its satisfaction.

Aggregate quantity and value of exports by HTS category to each third country will be provided to the Department by July 30 of each year for exports during the period November 1 through April 30 and by January 31 of each year for exports during period May 1 through October 31.

Transaction-specific data for all third country sales will also be reported on the schedule provided above in the format provided in the Appendix. However, if the Department concludes that transaction-specific data is not necessary for a given period, it will notify MOFTEC at least 90 days before the reporting deadline that transaction-specific sales data need not be reported. If the Department determines that such data is relevant in connection with Section VII and requests information on transactions for one or more third countries during a period for which the Department waived complete reporting, MOFTEC will provide the data listed in the Appendix for those specific transactions within 90 days of the request.

Both governments recognize that effective monitoring of this Agreement may require that MOFTEC provide information additional to that which is identified above. Accordingly, the Department may establish additional reporting requirements, as appropriate, during the course of this Agreement. The Department shall provide notice to MOFTEC of any additional reporting requirements no later than 45 days prior to the period covered by such reporting requirements unless a shorter notice period is mutually agreed.

B. Other Sources for Monitoring

The Department will review publicly-available data as well as Customs Form 7501 entry summaries and other official import data from the Bureau of the Census, on a monthly basis, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

The Department will monitor Bureau of the Census IM–115 computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the producer/exporter which may be responsible for such sales, the Department may request the U.S. Customs Service to provide such information. The Department may request other additional documentation from the U.S. Customs Service.

The Department may also request the U.S. Customs Service to direct ports of entry to forward an Antidumping Report of Importations for entries of the CTL plate during the period this Agreement is in effect.

C. Verification

MOFTEC will permit full verification of all information affiliated to the administration of this Agreement, including verification of the Chinese producer and the trading companies/brokers utilized in making sales/shipments to the United States, on an annual basis or more frequently, as the Department deems necessary to ensure that the Government of the People's Republic of China is in full compliance with the terms of the Agreement. Such verifications may take place in association with scheduled consultations whenever possible.

IX. Disclosure and Comment

A. The Department shall make available to representatives of each party to the proceeding, under appropriately-drawn administrative protective orders consistent with the Department's Regulations, business proprietary information submitted to the Department semi-annually or upon request, and in any administrative review of this Agreement.

B. Not later than 30 days after the date of disclosure under Section VII.A, the parties to the proceeding may submit written comments to the Department, not to exceed 30 pages.

C. During the anniversary month of this Agreement, each party to the proceeding may request a hearing on issues raised during the preceding Relevant Period. If such a hearing is requested, it will be conducted in accordance with Section 751 of the Act (19 U.S.C. 1675) and applicable regulations.

X. Consultations

MOFTEC and the Department shall hold consultations regarding matters concerning the implementation, operation, including the calculation of reference prices, and/or enforcement of this Agreement. Such consultations will be held each year during the anniversary month of this Agreement. Additional consultations may be held at any other time upon request of either MOFTEC or the Department.

XI. Violations of the Agreement

A. Violation

''Violation'' means noncompliance with the terms of this Agreement caused by an act or omission, in accordance with Section 353.19 of the Department's Regulations.

Each party will inform the other party of any violations of the Agreement which come to their attention and the action taken with respect thereto.

Exports in excess of the export limits set out in this Agreement shall not be considered a violation of the Agreement or an indication that the Agreement no longer meets the requirements of U.S. laws and regulations where such exports are inconsequential, inadvertent, and are applied against the export limits of the following Relevant Period.

Prior to making a determination of an alleged violation, the Department will engage in emergency consultations. Such consultations shall begin no later than 14 days from the day of request and shall provide for full review, but in no event will exceed 30 days. After consultations, the Department will provide MOFTEC 20 days within which to provide comments. The Department will make a determination within 30 days of the date established for submission of comments by MOFTEC.

B. Appropriate Action

If the Department determines that this Agreement is being or has been violated, the Department will take such action as it determines is appropriate under 734(i) of the Act and Section 353.19 of the Department's Regulations.

XII. Duration

The export limits provided for in Section III of this Agreement shall remain in force from the effective date of this Agreement through November 1, 2002.

The Department will, upon receiving a proper request no later than November 1, 2001, conduct an administrative review under Section 751 of the Act. The Department expects to terminate this Agreement and the underlying investigation no later than November 1, 2002, provided that the People's Republic of China has not been found to have violated the Agreement in any substantive manner. Such review and termination shall be conducted

consistent with section 353.25 of the Department's Regulations.

The Government of the People's Republic of China may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination at the request of MOFTEC, the provisions of Section 734(i) of the Act shall apply.

XIII. Conditions

The Department recognizes that it may determine during the life of this Agreement that the Chinese CTL plate industry is a market-oriented industry, or that the People's Republic of China is a market economy country. In either event, the Department may:

(a) Enter into a new suspension agreement under Section 734(b) or 734(c) of the Act; or

(b) If the investigation was not completed under section 353.18(i) of the Department's regulations, afford MOFTEC a full opportunity to submit new information, and take such information into account in reaching its final determination—provided that all parties to the proceeding are given a full opportunity to submit factual information and argument in rebuttal; or

(c) If the investigation was completed under section 353.18(i), consider a request made no later than 30 days after termination of the Agreement to conduct a changed circumstances review under Section 751(b).

XIV. Other Provisions

A. In entering into this Agreement, MOFTEC does not admit that any sales of CTL plate subject to this Agreement have been made at less than fair value or that such sales have materially injured, or threatened material injury to, an industry or industries in the United States.

B. The Department finds that this Agreement is in the public interest; that effective monitoring of this Agreement by the United States is practicable; and that this Agreement will prevent the suppression or undercutting of price levels of United States domestic CTL plate products by imports of the merchandise subject to this Agreement.

C. The Department does not consider any of the obligations concerning exports of CTL plate to the United States undertaken by MOFTEC pursuant to this Agreement relevant to the question of whether firms in the underlying investigation would be entitled to separate rates, should the investigation be resumed for any reason.

D. The English language version of this Agreement shall be controlling.

E. For all purposes hereunder, the Department and the signatory Government of the People's Republic of China shall be represented by, and all communications and notices shall be given and addressed to:

U.S. Department of Commerce, Assistant Secretary for Import Administration, International Trade Administration, Washington, D.C. 20230

Government of the People's Republic of China, Ministry of Foreign Trade and Economic Cooperation of the People's Republic of China, Beijing 100731

XV. Effective Date

The effective date of this Agreement suspending the antidumping investigation on CTL plate from the People's Republic of China shall be October 24, 1997.

Signed on this 24th day of October, 1997.

For the U.S. Department of Commerce.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

For the Government of the People's Republic of China.

Shi Jianxin,

Minister Counsellor, Embassy of the People's Republic of China.

Appendix

In accordance with the established format, MOFTEC shall collect and provide to the Department all information necessary to ensure compliance with this Agreement. This information will be provided to the Department on a semi-annual basis, or upon request.

MOFTEC will collect and maintain data on exports to the United States, and to countries other than the United States, on a continuous basis and provide the prescribed information to the Department.

MOFTEC will report the aggregate volume and value of home market sales of CTL plate for those companies which exported to the United States in the same reporting period as specified in Section VIII.A. For these companies, MOFTEC will report the aggregate home market sales of CTL plate for the grade listed in Section IV. C. of the Agreement. Upon demand, MOFTEC will provide the information requested in the ''Home Market Sales'' section.

MOFTEC will provide a narrative explanation to substantiate all data collected in accordance with the following formats.

Report of Inventories

Report, by location, the inventories of CTL plate held by a Chinese legal entity in the United States and imported into the United States during the period November 5, 1996, through the effective date of the Agreement.

1. Quantity: Indicate original units of measure (metric tons).

2. Location: Identify where the inventory is currently being held. Provide the name and address for the location.

3. Titled Party: Name and address of party who legally has beneficial title to the merchandise.

4. Contract Registration Number: Indicate the number(s) relating to each entry now being held in inventory.

5. Export License Number: Indicate the number(s) relating to each sale or entry.

6. Date of Original Export: Date the Export License is issued.

7. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.

8. Original Importer: Name and address.

9. Original Exporter: Name and address.

10. Complete Description of Merchandise: Include heat numbers, HTS number, physical description, ASTM specification, and other available information.

Exports to the United States

MOFTEC will provide all Export Licenses issued to Chinese entities which shall contain the following information with the exception that information requested in item #9, date of entry, item #10, Importer of Record; item #16, final destination, item #17, other, may be omitted if unknown to MOFTEC and the licensee.

1. Export License number(s): Indicate the number(s) relating to each sale and/or entry.

2. Complete Description of Merchandise: Include the 10 digit HTS category, and the ASTM or equivalent grade.

3. Quantity: Indicate in metric tons.

4. F.O.B. Sales Value: Indicate currency used.

5. Unit Price: Indicate per metric ton.

6. Date of Sale: The date all essential terms of order (i.e., price and quantity) become fixed.

7. Sales Order Number (s): Indicate the specification number/order number relating to each sale and/or shipment.

8. Date of Export: Date the export license is issued.

9. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.

10. Importer of Record: Name and address.

11. Trading Company: Name and address of trading company involved in sale.

12. Customer: Name and address of the first unaffiliated party purchasing from the Chinese producer/exporter.

13. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated with the Chinese producer/exporter.

14. Quota Allocated to Exporter: Indicate the total amount of quota allocated to the individual Chinese producer/exporter during the Relevant Period.

15. Quota Remaining: Indicate the remaining quota available to the individual Chinese producer/exporter during the Relevant Period.

16. Final Destination: Indicate the complete name and address of the end-user.

17. Other: Indicate the identity of any party(ies) in the transaction chain between the customer and the final destination/end user.

Customer Certification

MOFTEC shall ensure that all customers of the CTL plate shall certify that the

merchandise imported into the United States pursuant to this Agreement shall not be loaned or swapped.

Mill Certification

MOFTEC shall ensure that all shipments of CTL plate exported to the United States pursuant to this Agreement shall be accompanied by a copy of the original mill certification, which includes the heat number(s).

Sales to Countries Other Than the United States

Pursuant to Section VIII, paragraph A, MOFTEC will provide country-specific volume and value information for all exports of CTL plate to third countries. The following information shall be provided except that information requested in item #6, importer of record, and item #10, other, may be omitted if unknown to MOFTEC and the licensee.

1. Customs Export Declaration Number: Indicate the number(s) related to each shipment.
2. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
3. Date of Sale: The date all essential terms of the order (i.e., price and quantity) become fixed.
4. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
5. Date of Export: Date of Export Certification is issued.
6. Importer of Record: Name and address.
7. Customer: Name and address of the first unaffiliated party purchasing from the Chinese producer/exporter.
8. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
9. Name of Vessel: Identify the name of vessel for each shipment to third countries.
10. Other: The identity of any subsequent trading company in the transaction chain pursuant to Section VII.B.
11. Estimated Date of Entry: Date the merchandise entered the third country or the date a book transfer took place.

Home Market Sales

Pursuant to Section VIII.A., MOFTEC will provide transaction-specific home market information for sales of subject merchandise, upon demand. The following information shall be provided, except that information requested in item #6 may be omitted if unknown to MOFTEC and the licensee.

1. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
2. Date of Sale: The date all essential terms of the order (i.e., price and quantity become fixed.
3. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
4. Customer: Name and address of the first affiliated party purchasing from the Chinese exporter.
5. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
6. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–808]

Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate From the Russian Federation

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

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping duty investigation involving certain cut-to-length carbon steel plate (CTL plate) from the Russian Federation. The basis for this action is an agreement between the Department and the Ministry of Foreign Economic Relations and Trade of the Russian Federation (MINFER) wherein MINFER has agreed to restrict the volume of direct or indirect exports to the United States of CTL plate from all Russian producers/exporters and to revise its prices to eliminate completely sales of this merchandise to the United States at less than fair value.

EFFECTIVE DATE: October 24, 1997.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, or Eugenia Chu, Office of AD/CVD Enforcement III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue N.W., Washington, D.C. 20230; telephone (202) 482–1324, or (202) 482–3964 respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1996, the Department initiated an antidumping investigation under section 732 of the Tariff Act of 1930, (the Act), as amended, to determine whether imports of CTL plate from the Russian Federation are being or are likely to be sold in the United States at less than fair value (61 FR 64051 (December 3, 1996)). On December 19, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination (see ITC Investigation Nos. 731–TA–753–756). On June 11, 1997, the Department preliminarily determined that CTL plate is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (62 FR 31967, (June 11, 1997)).

The Department and MINFER initialed a proposed agreement suspending this investigation on September 24, 1997. On September 25, 1997, we invited interested parties to provide written comments on the agreement and received comments from Geneva Steel, Gulf States Steel, Bethlehem Steel Corp., U.S. Steel Group, United Steel Workers of America, and the Government of the Russian Federation.

The Department and MINFER signed the final suspension agreement on October 24, 1997.

Scope of Investigation

See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine, signed on October 24, 1997.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with Section 734 (l) of the Act, we have determined that the agreement will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation, that the agreement is in the public interest, and that the agreement can be monitored effectively. See October 24, 1997, Public Interest Memorandum. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(l) of the Act have been met. The terms and conditions of this agreement, signed October 24, 1997, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries of cut-to-length carbon steel plate from the Russian Federation entered or withdrawn from warehouse, for consumption, as directed in our notice of ''Preliminary Determination of Sales at Less Than Fair Value: Cut-to-Length Carbon Steel Plate from the Russian Federation'' and ''Postponement of the Final Determination: Cut-to-Length Carbon Steel Plate from the Russian Federation'' is hereby terminated. Any cash deposits on entries of cut-to-length carbon steel plate from the Russian Federation pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

On October 14, 1997 we received a request from petitioners requesting that we continue the investigation. We received separate requests for continuation from Bethlehem Steel Corp., U.S. Steel Corp. (A Unit of USX Corporation), and the United Steelworkers of America, interested parties under section 771(9)(D) of the

Act. Pursuant to these requests, we have completed the investigation in accordance with section 734(g) of the Act, and have notified the International Trade Commission (ITC) of our determination. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated (*see* section 734(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue an antidumping duty order as long as the suspension agreement remains in force (*see* section 734(f)(3)(B) of the Act).

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: November 7, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Agreement Suspending the Antidumping Investigation on Cut-To-Length Carbon Steel Plate From the Russian Federation

For the purpose of encouraging free and fair trade in cut-to-length carbon steel plate (''steel plate''), establishing more normal market relations, and preventing the suppression or undercutting of price levels of the domestic product, the United States Department of Commerce (''U.S. DOC'') and the Ministry of Foreign Economic Relations and Trade of the Russian Federation (''MINFER of Russia'') enter into this suspension agreement (''the Agreement'').

Pursuant to this Agreement, MINFER of Russia will restrict the volume of direct and indirect exports to the United States of steel plate from all Russian producers/exporters, subject to the terms and provisions set forth below.

On the basis of this Agreement, pursuant to the provisions of Section 734(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(1)), (see Appendix II), U.S. DOC shall suspend its antidumping investigation with respect to steel plate produced in Russia, subject to the terms and provisions set forth below. Further, U.S. DOC will instruct the U.S. Customs Service to terminate the suspension of liquidation of, and release any cash deposit or bond posted on, the steel plate covered by this Agreement as of the effective date of this Agreement.

I. Definitions

For purposes of this Agreement, the following definitions apply.

A. ''Date of Export'' for imports of steel plate to the United States shall be considered the date on which the Export License/Temporary Document was issued.

B. ''Parties to the Proceeding'' means any interested party, within the meaning of section 353.2(k) of the Department's Regulations, which actively participates through written submission of factual information or written argument.

C. ''Indirect Exports'' means arrangements as defined in Section III.E of this Agreement and exports from Russia through one or more third countries, whether or not such exports are further processed, insofar as they remain within the scope of the Agreement, and includes further processing which results in minor alterations, or under certain limited circumstances, as described in Section VII. G., further processing which results in substantial transformation as a result of an attempt to circumvent the Agreement, whether or not such exports are sold in one or more third countries prior to importation into the United States and whether or not the Russian producer knew the product was destined to enter the United States.

D. For purposes of this Agreement, ''United States'' shall comprise the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located in the territory of the United States.

E. ''For Consumption'' means all steel plate sold to customers, such as, trading companies, distributors, resellers, end-users, or service centers.

F. ''End-User'' means an entity, such as a steel service center, reseller, trading company, end-user. etc. which consumes steel plate as defined in Section I.E.

G. ''Date of Sale'' is defined as the date on which price and quantity become firm, e.g., the specification date or, the date of the contract if the contract fixes the price and quantity for more than one year. as recorded in the company s records kept in the ordinary course of business.

H. ''Export License/Temporary Document'' is the document issued by (''MINFER'') of Russia which serves also as both a quota certificate and a certificate of origin. An Export License/ Temporary Document must accompany all shipments of steel plate from Russia to the United States, and must contain all of the information enumerated in the Appendix I to this Agreement, except that Date of Entry, Importer of Record, Final Destination, and Other, may be omitted if unknown to MTNFFR of Russia and the licensee.

I. Reference Price'' means the price calculated by U.S. DOC, as described in Section IV, on a quarterly basis to be used as a floor price for sales of steel plate to the United States.

J. ''Relevant Period'' for the export limit of this Agreement means the period from January I through December 31 of each year that the Agreement is in effect, except that the First Relevant Period shall be the period from October 24, 1997 through December 31, 1998. The Final Relevant Period shall be the period from January 1, 2002 through October 23, 2002.

II. Product Coverage

The products covered by this Agreement include hot-rolled iron and non-alloy steel universal mill steel plates (i.e., flat-rolled products rolled on four faces or in a closed box pass. of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other non-metallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape. hot-rolled, neither clad, plated, nor coated with metal. whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as steel plate in this Agreement are flatrolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'') for example. products which have been beveled or rounded at the edges. This merchandise is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') under item numbers 7208.40.3030, 7208.40.3060. 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from steel plate within the scope of this Agreement is grade X–70 steel plate. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive.

The products covered by the above definition shall be referred to hereinafter as ''steel plate''.

III. Export Limits

A. The export limit for each Relevant Period shall be 100,000 metric tons of steel plate, except that for the First Relevant Period the export limit shall be 118,630 metric tons of steel plate and for the Final Relevant Period the export limit shall be 81,370 metric tons of steel plate. No later than 60 days prior to the end of the First Relevant Period, U.S. DOC shall calculate an upward or downward adjustment to the next Relevant Period's export limit based upon the changes in U.S. apparent consumption for steel plate. U.S. apparent consumption will be calculated using of financial statistics of the U.S. Census Bureau and data from the American Iron and Steel Institute regarding domestic shipments. The maximum adjustment will be plus or minus no more than 6 percent per Relevant Period, and will be calculated by comparing the most recent twelve months of data for U.S. apparent consumption available to U.S. DOC at the time of the calculation, to the level of the previous corresponding twelve months of data. U.S. DOC will then apply the adjustment to the Relevant Period's export limit. U.S. DOC will similarly adjust the export limit every Relevant Period, and the effects of the adjustments shall be cumulative.

Deductions from the export limit shall be made based on the ''Date of Export'', as defined in Section I. MINFER of Russia will not issue Export Licenses/ Temporary Documents accounting for more than sixty percent of the export limits for any Relevant Period during either semi-annual period within such Relevant Period. The two semi-annual periods within the Relevant Period are defined as: (I) January 1 through June 30; and (2) July 1 through December 31 and except that for the First Relevant Period, the two semi-annual periods are defined as: (1) the period beginning on October 24, 1997 through May 31 1998; and (2) the period June 17 1998 through December 31, 1998. and for the Final Relevant Period, the semi-annual periods are defined as: (1) January 1, 2002 through May 31, 2002; and (2) June 1, 2001 through October 23, 2002.

B. On and after October 24, 1997, MINFER of Russia will restrict the volume of direct or indirect exports of steel plate to the United States, and the transfer and withdrawal from inventory of steel plate (consistent with the provisions of Section III.D) in accordance with the export limit then in effect.

C. Any amount delivered during a Relevant Period shall not when cumulated with all prior deliveries in such Relevant Period, exceed the export limit for that Relevant Period except as provided for in Section III.G.

D. Any inventories of steel plate currently held in the United States by a Russian entity and imported into the United States between November 5, 1996, and October 24 1997. will be subject to the following conditions:

1. Such inventories will not be transferred or withdrawn from inventory for consumption in the United States without an Export License/Temporary Document issued by MINFER of Russia. Any such transfers or withdrawals from inventory shall be deducted from the export limit in effect at the time the Export License/ Temporary Document is issued.

2. A request for an Export License/ Temporary Document under this provision shall be accompanied by a report specifying the data pursuant to the provisions of Russian legislation, in particular, the identity of the original exporter and importer, the customer, if known, the original date of export and entry into the United States, if known, the quantity expressed in metric tons, and a complete description of the steel plate (including heat numbers and other available identifying documentation).

E. Any arrangement involving the exchange, sale, or delivery of steel plate products from Russia whether or not further processed within the meaning of I.C., to the degree it can be shown to have resulted in the sale or delivery in the United States of steel plate products from a country other than Russia, will be counted toward the export limit under this Agreement. Any such transaction that does not comply with the requirements of Section V will be deducted from the export limit pursuant to Section VII.

F. When steel plate is imported into the United States and is subsequently re-exported, or re-packaged and re-exported or further processed within the meaning of I.C. and re-exported, the export limit shall be increased by the quantity re-exported. Such increase will be applicable to the Relevant Period corresponding to the time of such re-export. Such increase will be applied only after U.S. DOC receives, and has the opportunity to verify, evidence demonstrating original importation. any repackaging or further processing, and subsequent exportation.

G. Export Licenses/Temporary Documents issued for a given Relevant Period may not be used after the expiration of that Relevant Period, except that Export Licenses/Temporary Documents not used during the Relevant Period may be used during the first three months of the following Relevant Period, up to a maximum of 15 percent of the export limit for that following Relevant Period. Such ''carried-over'' quota shall be counted against the export limit applicable to the previous Relevant Period.

Export Licenses/Temporary Documents for up to 15 percent of the export limit for a subsequent Relevant Period may be issued as early as 45 days prior to the beginning of the subsequent Relevant Period. Such ''carried-back'' quota shall be counted against the export limit applicable to the following Relevant Period.

H. For the first 120 days after October 24, 1997, steel plate shall be admitted into the United States with a ''Temporary Document.''

The volume of any such imports will be deducted from the export limit applicable to the First Relevant Period. A full reporting of any such imports, which must correspond to the information detailed in Appendix I.B. to this Agreement, must be submitted to U.S. DOC no later than 45 days after the conclusion of the 120 day period. This data must be sorted on the basis of date of export and must be set forth on a transaction-specific basis.

IV. Reference Price

A. Steel plate will not be sold below the reference price in effect on the date of sale.

B. The reference price issued quarterly by U.S. DOC shall be released by September 1, December 1, March 1, and June 1 of each year and shall be effective on October 1, January 1, April 1, and July 1, respectively. The reference price for the First Relevant Period shall be issued and effective on October 24. 1997. Either party is entitled to request consultations regarding the calculation of reference prices.

C. The reference price for the First Relevant Period shall be as follows:

A36—$300.00 per metric ton
AS72—$325.00 per metric ton

Until such time as U.S. DOC and MINFER of Russia agree, after consultations, upon reference prices for other grades of steel plate, only grades A36 and A572 rnay be exported to the United States. Consultations regarding reference prices for other grades of steel plate shall be held within 30 days of a request and shall be completed within 15 days.

D. For each subsequent Relevant Period, the reference price will be adjusted on a quarterly basis to reflect the change in the BLS Producer Price Index (PPI) for carbon steel plate over the three months for which data is available preceding the date on which the reference price is issued.

If the last month of BLS PPI for the three-month period preceding the date on which the reference price is issued has fallen by more than 2.6 percent from the average of the first two months of the period, the reference price will be adjusted on the basis of the PPI for the last month of the three-month period.

E. MINFER of Russia will ensure that, with respect to merchandise covered by each Export License/Temporary Document, the Russian unit values of steel plate exports will equal or exceed the reference price at equivalent points in the transaction chain. The reference price will be F.O.B. port. MINFER of Russia will ensure that contracts and all relevant documentation will be available to U.S. DOC and will be subject to verification.

V. Export License/Temporary Document

A. MINFER of Russia shall restrict the volume of direct or indirect exports of steel plate to the United States by means of annual quota allocations and Export Licenses/Temporary Documents. Export Licenses/Temporary Documents shall be issued by MINFER of Russia for all direct or indirect exports of steel plate to the United States in accordance with the export limit in Section III and the reference price in Section IV.

B. Thirty days following the allocation of quota rights for any Relevant Period.

MINFER of Russia shall provide to U.S. DOC a notice identifying each quota recipient and the volume of quota which each recipient has been accorded (''notice of quota allocation results''). MINFER of Russia shall not be required to seek the approval of U.S. DOC for changing the volume of quota assigned to individual quota recipients. MINFER of Russia shall inform U.S. DOC of any changes in the volume of quota assigned to individual quota recipients within 60 days of the date on which such changes become effective.

C. Before it issues an Export License/ Temporary Document, MINFER of Russia will ensure that the Relevant Period's export limit is not exceeded and that the price for the steel plate is at or above the reference price.

D. MINFER of Russia shall take measures, as may be necessary, to make effective the obligations resulting from the reference price, export limits and Export Licenses/Temporary Documents. MINFER of Russia will inform U.S. DOC of any violations concerning reference price, export limits and/or Export Licenses/Temporary Documents which come to its attention and the measures taken with respect thereto.

U.S. DOC will inform MINFER of Russia of violations concerning the reference price, export limits, and/or Export Licenses/Temporary Documents which come to its attention and the actions taken with respect thereto.

E. Export Licenses/Temporary Documents will be issued sequentially, endorsed against the export limit for the Relevant Period, and will reference the notice of quota allocation results for the appropriate Relevant Period.

F. Export License/Temporary Document must be issued no earlier than 90 days before the day on which the steel plate is accepted-by a transportation company, as indicated in the bill of lading or a comparable transportation document, for export. Export License/Temporary Document must be also issued in English.

G. On and after October 24, 1997, the United States shall require presentation of an original stamped Export License/ Temporary Document as a condition for entry of steel plate into the United States. The United States will prohibit the entry of any steel plate not accompanied by an original stamped Export License/Temporary Document.[1]

VI. Implementation

In order to effectively restrict the volume of exports of steel plate to the United States, MINFER of Russia agrees to implement the following procedures no later than 90 days after October 24 1997, except as noted in Section VI.A.:

A. Establish a quota and licensing program for all exports of steel plate to, or destined directly or indirectly for consumption in, the United States no later than 120 days after October 24, 1997.

B. Ensure compliance by any official Russian institution, chamber, or other entities authorized by the Government of Russia all Russian producers, exporters, brokers. and traders of the steel plate, and their relevant affiliated parties; as well as relevant trading companies/resellers utilized by the Russian producer to make sales to the United States. with all procedures established in order to effectuate this Agreement.

C. Collect information-from all Russian producers, exporters, brokers, and traders of steel plate, and their relevant affiliated parties, as well as relevant trading companies/resellers utilized by the Russian producer, on the sale of the steel plate, and report such information pursuant to Article VIII.A of this Agreement

D. Issue Export Licenses/Temporary Documents to Russian producers and exporters of steel plate for the duration of this Agreement in accordance with Russian legislation.

E. Impose strict measures, such as prohibition from participation in the export limits allowed by the Agreement. in the event that any Russian entity does not comply in full with the terms of the Agreement.

F. Require that purchasers agree not to circumvent this Agreement, report to MINFER of Russia subsequent arrangement entered into for the sale, exchange, or loan to the United States of steel plate purchased from Russia, and include these same provisions in any subsequent contracts involving steel plate purchased from Russia.

G. For purposes of this Agreement the duration of validity of Export Licenses/ Temporary Documents will be six (6) months. U.S. D.O.C. and MINFER of Russia may agree to an extension of the validity of the Export License/ Temporary Document in cases of force majeure.

VII. Anticircumvention

A. MINFER of Russia will take all appropriate measures under Russian law to prevent circumvention of this Agreement. It shall respond promptly to conduct an inquiry into allegations of circumvention, including allegations raised by U.S. DOC, and shall complete such inquiries in a timely manner (normally within 45 days). MINFER of Russia shall notify U.S. DOC of the results of its inquiries within 15 days of the conclusion of such inquiries. Within 15 days of a request from U.S. DOC, MINFER of Russia shall share with U.S. DOC all information received or collected by MINFER of Russia regarding its inquiries, its analysis of such information, and the results of such inquiries. MINFER of Russia will require all Russian exporters of steel plate to include a provision in their contracts for sales to countries other than the United States that the steel plate sold through such contracts cannot be re-exported, transshipped, or swapped to the United States, or otherwise used to circumvent the export limits of this Agreement. This requirement does not apply to exports to the United States through a third country which are accompanied by a valid Export License/Temporary Document. MINFER of Russia will also establish appropriate mechanisms to enforce this requirement.

B. If, in an inquiry pursuant to Section VI.A, MINFER of Russia determines that a Russian entity has participated in a transaction that resulted in circumvention of the export limits of this Agreement, then MINFER

[1] The validity of an Export License/Temporary Document will not be affected by a subsequent change of an HTS number.

of Russia shall impose measures on such company including, but not limited to, denial of access to a quota for the steel plate. Additionally, MINFER of Russia shall deduct an amount of steel plate equivalent to the amount involved in such circumvention from the export limit and shall immediately notify U.S. DOC of the amount deducted. If sufficient tonnage is not available in the current Relevant Period, then the remaining amount necessary shall be deducted from the subsequent Relevant Period.

C. If MINFER of Russia determines that a company from a third country has circumvented the Agreement and the parties agree that no Russian entity participated in or had knowledge of such activities, then the parties shall hold consultations for the purpose of sharing information regarding such circumvention and reaching mutual agreement on the appropriate measures to be taken to eliminate such circumvention. If the parties are unable to reach mutual agreement within 45 days, then U.S. DOC may take appropriate measures, such as deducting the amount of steel plate involved in such circumvention from the export limit, or instructing U.S. Customs to deny entry to any steel plate sold by the entity found to be circumventing the Agreement, taking into account all relevant factors. Before taking such measures U.S. DOC will notify MINFER of Russia of the facts and reasons constituting the basis for U.S. DOC's intended action and will afford MINFER of Russia 15 days in which to comment.

D. If U.S. DOC determines that a Russian entity participated in circumvention the parties shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on an appropriate resolution of the problem. If the parties are unable to reach mutual agreement within 60 days, U.S. DOC may take appropriate measures, such as deducting the amount of steel plate involved in such circumvention from the export limit or instructing U.S. Customs to deny entry to any steel plate sold by the entity found to be circumventing the Agreement. Before taking such measures, U.S. DOC will notify MINFER of Russia of the facts and reasons constituting the basis for U.S. DOC's intended action and will afford MINFER of Russia 30 days in which to comment.

E. U.S. DOC shall direct the U.S. Customs Service to require all importers of steel plate into the United States, regardless of stated country of origin, to submit at the time of entry a written statement certifying that the steel plate being imported was not obtained under any arrangement, swap, or other exchange which would result in the circumvention of the export limits established by this Agreement. Where U.S. DOC has reason to believe that such a certification has been made falsely, U.S. DOC will refer the matter to the U.S. Customs Service or U.S. Department of Justice for further action.

F. U.S. DOC will take the following factors into account in distinguishing normal steel plate market arrangements, swaps, or other exchanges from arrangements, swaps, or other exchanges which would result in the circumvention of the export limits established by this Agreement:

1. Existence of any verbal or written arrangements which would result in the circumvention of the export limits established by this Agreement;

2. Existence of any arrangement as defined in Section III.E that was not reported to U.S. DOC pursuant to Section VIII;

3. Existence and function of any subsidiaries or affiliates of the parties involved;

4. Existence and function of any historical and/or traditional trading patterns among the parties involved;

5. Deviations (and reasons for deviation) from the above patterns, including physical conditions of relevant steel plate facilities;

6. Existence of any payments unaccounted for by previous or subsequent deliveries, or any payments to one party for steel plate delivered or swapped by another party;

7. Sequence and timing of the arrangements; and

8. Any other information relevant to the transaction or circumstances.

G. ''Swaps'' include, but are not limited to:

Ownership swaps—involve the exchange of ownership of steel plate without physical transfer. These may include exchange of ownership of steel plate in different countries, so that the parties obtain ownership of products located in different countries, or exchange of ownership of steel plate produced in different countries, so that the parties obtain ownership of products of different national origin.

Flag swaps—involve the exchange of indicia of national origin of steel plate, without any exchange of ownership.

Displacement swaps—involve the sale or delivery of steel plate from Russia to an intermediary country (or countries) which can be shown to have resulted in the ultimate delivery or sale into the United States of displaced steel plate, regardless of the sequence of the transaction.

H. U.S. DOC will enter its determinations regarding circumvention into the record of the Agreement.

I. MINFER of Russia may request an extension of up to 15 days for any of the deadlines mentioned in this Section.

VIII. Monitoring

MINFER of Russia will provide to U.S. DOC such information as is necessary and appropriate to monitor the implementation of and compliance with the terms of this Agreement. U.S. DOC shall provide semi-annual reports to MINFER of Russia indicating the volume of imports of the steel plate to the United States, together with such additional information as is necessary and appropriate to monitor the implementation of this Agreement.

A. Reporting of Data

Beginning on October 24, 1997, MINFER of Russia shall collect and provide to U.S. DOC information for exports to the United States set forth in the agreed format in the Appendix I to this Agreement. All such information will be provided to U.S. DOC by March 31st of each year for exports to the United States during the period from July 1st through December 31st. In addition, such information will be provided to U.S. DOC by September 30th for exports from January 1st through June 30th, or within 90 days of a request made by U.S. DOC. Such information will be subject to the verification provision identified in Section VIII.C of this Agreement. MINFER of Russia agrees to provide Export Licenses/Temporary Documents to only those Russian producers/exporters which permit verification and full reporting of data. U.S. DOC may disregard any information submitted after the deadlines set forth in this Section or any information which it is unable to verify to its satisfaction.

Aggregate quantity and value of exports of steel plate to each third country will be provided to U.S. DOC by March 31st of each year for exports during the period from July 1st through December 31st. In addition, such information will be provided to U.S. DOC by September 30th for exports from January 1st through June 30th.

Upon request by the U.S. DOC, transaction-specific data for exports of steel plate to third country(ies) and home market sales of steel plate will also be reported in the format provided in the Appendix I. This information shall be provided within 45 days of the request. However, MINFER of Russia

may request an extension of up to 30 days.

Both Parties recognize that the effective monitoring of this Agreement may require that MINFER of Russia provide information additional to that which is identified above. Accordingly, U.S. DOC may establish additional reporting requirements, as appropriate, during the course of this Agreement.

U.S. DOC shall provide notice to MINFER of Russia of any additional reporting requirements no later than 45 days prior to the period covered by such reporting requirements unless a shorter notice period is mutually agreed.

MINFER of Russia may request an extension of up to 30 days for any of the deadlines mentioned in this Section.

B. Other Sources for Monitoring

U.S. DOC will review publicly available data as well as U.S. Customs entry summaries and other of financial import data from the Bureau of the Census, on a monthly basis, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

U.S. DOC will monitor Bureau of the Census computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the producer/exporter which may be responsible for such sales, U.S. DOC may request the U.S. Customs Service to provide such information. U.S. DOC may request other additional documentation from the U.S. Customs Service.

U.S. DOC may also request the U.S. Customs Service to direct ports of entry to forward an Antidumping Report of Importations for entries of the steel plate during the period this Agreement is in effect.

C. Verification

MINFER of Russia will permit full verification of all information related to the administration of this Agreement, on an annual basis or more frequently, as the U.S. D.O.C. deems necessary to ensure that MINFER of Russia is in full compliance with the terms of the Agreement. Such verifications may take place in association with scheduled consultations whenever possible.

IX. Disclosure and Comment

A. U.S. DOC shall make available to representatives of each party to the proceeding, under appropriately-drawn administrative protective orders consistent with U.S. laws and regulations, business proprietary information submitted to U.S. DOC semi-annually or upon request, and in any administrative review of this Agreement.

B. Not later than 45 days after the date of disclosure under Section VIII.A, the parties to the proceeding may submit written comments to U.S. DOC, not to exceed 30 pages.

C. During the anniversary month of this Agreement each party to the proceeding may request a hearing on issues raised during the preceding Relevant Period. If such a hearing is requested, it will be conducted in accordance with U.S. laws and regulations.

X. Consultations

MINFER of Russia and U.S. DOC shall hold consultations regarding matters concerning the implementation operation including the calculation of reference prices, and/or enforcement of this Agreement. Such consultations will be held each year during the anniversary month of this Agreement. Additional consultations may be held at any other time upon request of either MINFER of Russia or U.S. DOC.

XI. Violations of the Agreement

A. Violation

''Violation'' means noncompliance with the terms of this Agreement caused by an act or omission, in accordance with U.S. Laws and regulations.

MINFER of Russia and U.S. DOC will inform the other Party of any violations of the Agreement which come to their attention and the action taken with respect thereto.

Exports in excess of the export limits set out in this Agreement shall not be considered a violation of this Agreement or an indication the Agreement no longer meets the requirements of U.S. laws and regulations where such exports are inconsequential, inadvertent, and are applied against the export limits of the following Relevant Period.

Prior to making a determination of an alleged violation, U.S. DOC will engage in emergency consultations. Such consultations shall begin no later than 21 days from the day of request and shall provide for full review, but in no event will exceed 40 days. After consultations, U.S. DOC will provide MINFER of Russia 20 days within which to provide comments. U.S. DOC will make a determination within 30 days after the date established for submission of comments by MINFER of Russia.

B. Appropriate Action

If U.S. DOC determines that this Agreement is being or has been violated, U.S. DOC will take such action as it determines is appropriate under the U.S. laws and regulations.

C. MINFER of Russia may request an extension of up to 15 days for any of the deadlines mentioned in this Section.

XII. Duration

The export limit provided for in Section III of this Agreement shall remain in force from October 24, 1997 through October 23, 2002.

U.S. DOC will, upon receiving a proper request made by MINFER of Russia, conduct an administrative review under the U.S. laws and regulations. U.S. DOC expects to terminate this Agreement and the underlying investigation no later than 5 years from October 24, 1997, provided that no Russian entity has been found to have violated the Agreement in any substantive manner. Such review and termination shall be conducted with U.S. laws and regulations.

MINFER of Russia may terminate this Agreement at any time upon notice to U.S. DOC. Termination shall be effective 60 days after such notice is given to U.S. DOC. Upon termination at the request of MINFER of Russia, the provisions of U.S. laws and regulations shall apply.

XIII. Other Provisions

A. U.S. DOC finds that this Agreement is in the public interest, that effective monitoring of this Agreement by the United States is practicable, and that this Agreement will prevent the suppression or undercutting of price levels of United States domestic steel plate products by imports of the steel plate subject to this Agreement.

B. U.S. DOC does not consider any of the obligations concerning exports of steel plate to the United States undertaken by MINFER of Russia pursuant to this Agreement relevant to the question of whether firms in the underlying investigation would be entitled to separate rates, should the investigation be resumed for any reason.

C. The English and Russian language versions of this Agreement shall be authentic and equally binding, with the English version being controlling.

D. All provisions of this Agreement, including the provisions of the Preamble, shall have equal force.

E. For all purposes hereunder, the signatory Parties shall be represented by, and all communications and notices shall be given and addressed to:

Department: U.S. Department of Commerce, Assistant Secretary for Import Administration, International Trade Administration, Washington, D.C. 20230

Ministry: Head of Department for the Regulation of External Economic Activities of the Ministry for Foreign Economic Relations and Trade of the Russian Federation, 18/1 Ovchinnikovskaya naberezhnaya, Moscow~ 1 13324, Russia

XIV. Effective Date

The effective date of this Agreement suspending the antidumping investigation on cut-to-length carbon steel plate from Russia shall be October 24, 1997.

Signed on this 24th day of October, 1997.

For U.S. DOC.

Robert LaRussa,

Assistant Secretary for Import Administration.

For MINFER of Russia.

Vladimir M. Chibirev,

Acting Trade Representative of the Russian Federation to the United States.

Appendix I

In accordance with the established format, MINFER of Russia shall collect and provide to U.S. DOC all information necessary to ensure compliance with this Agreement. This information will be provided-to U.S. DOC on a semi-annual basis.

MINFER of Russia will collect and maintain data on exports to the United States on a continuous basis. Sales data for the home market, and data for exports to countries other than the United States. will be reported upon request.

MINFER of Russia will provide a narrative explanation to substantiate all data collected in accordance with the following formats.

A. Report of Inventories

Report by location, the inventories held by Russian entities in the United States and imported into the United States during the period November 5, 1996 through October 24, 1997.

l. Quantity: Indicate original units of measure and in metric tons.
2. Location: Identify where the inventory is currently being held. Provide the name and address for the location.
3. Titled Party: Name and address of party who legally has title to the steel plate.
4. Export License/Temporary Document Number: Indicate the number(s) relating to each entry now being held in inventory.
5. Certificate of Origin Number(s): Indicate the number(s) relating to each sale or entry.
6. Date of Original Export: Date the Export License/Temporary Document is issued.
7. Date of Entry: Date the steel plate entered the United States or the date book transfer took place.
8. Original Importer: Name and address.
9. Original Exporter: Name and address.
10. Complete Description of Merchandise: Include heat numbers, HTS numbers, physical description. ASTM specification, and other available information.

B. Exports to The United States

MINFER of Russia will provide all Export License/Temporary Document, which shall contain the following information except that information requested in item #9, date of entry, item #10, importer of record, item #16, final destination, and item #17 other, may be omitted if unknown to MINFFR of Russia and the Russian licensee.

1. Export License/Temporary Document: Indicate the number(s) relating to each sale and or entry.
2. Complete Description of Merchandise: Include the 10 digit HTS category, and the ASTM or equivalent grade.
3. Quantity: Indicate in metric tons.
4. F.O.B. Sales Value: Indicate currency used.
5. Unit Price: Indicate currency used per metric ton.
6. Date of Sale: The date all essential terms of the order (i.e, price and quantity) become fixed.
7. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
8. Date of Export: Date the Export License/ Temporary Document is Issued.
9. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
10. Importer of Record: Name and address.
11. Trading Company: Name and address of trading company involved in sale.
12. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
13. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated to the Russian exporter.
14. Quota Allocated to Exporter: Indicate the total amount of quota allocated to the individual exporter during the Relevant Period.
15. Quota Remaining: Indicate the remaining quota available to the individual exporter during the Relevant Period.
16. Final Destination: The complete name and address of the end-user.
17. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination/end-user.

Mill Certification

MINFER of Russia shall ensure that all shipments of steel plate exported to the United States pursuant to this Agreement, shall be accompanied by a copy of the original mill certification, which includes the heat number(s).

C. Exports Other Than to The United States

Pursuant to Section VIII, paragraph A, MINFER of Russia will provide country-specific volume and value information for exports of steel plate to third countries, upon request, regardless of whether MINFER of Russia licenses exports of steel plate to such country(ies). The following information shall be provided except that information requested in item #6, date of entry, #7, importer of record, and item #10, may be omitted if unknown to MINFER of Russia and the Russian licensee.

1. Export License/Temporary Document: Indicate the number(s) relating to each sale and/or entry, if any.
2. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
3. Date of Sale: The date all essential terms of the order (i.e., price and quantity) become fixed.
4. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
5. Date of Export: Date Export License/ Temporary Document is issued, if any.
6. Date of Entry: Date the merchandise entered the third country or the date a book transfer took place.
7. Importer of Record: Name and address.
8. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
9. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
10. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination.

D. Home Market Sales

Pursuant to Section VIII, paragraph A, the MINFER of Russia will provide home market volume and value information for sales of steel plate, upon request. The following information shall be provided with the exception of item #6, if unknown to MINFER of Russia and the Russian producer/exporter.

1. Quantity: Indicate in original units of measure sold and/or entered in metric tons. .
2. Date of Sale: The date all essential terms of order (i.e., price and quantity) become fixed.
3. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
4. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
5. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
6. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination.

Appendix II

Section 734 (1) of the Tariff Act of 1930 as amended:

(1) Special Rule for Non-Market Economy Countries

(I) In General.—The administering authority may suspend an investigation under this subtitle upon acceptance of an agreement with a non-market economy country to restrict the volume of imports into the United States of the merchandise under investigation only if the administering authority determines that:

(A) such agreement satisfies the requirements of subsection (d), and
(B) will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.

(2) Failure of Agreements.—If the administering authority determines that the agreement accepted under this subsection no

longer prevents the suppression or undercutting of domestic prices of merchandise manufactured in the United States, the provisions of subsection (I) shall apply.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–808]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation

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

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan at (202) 482–1324 or Eugenia Chu at (202) 482–3964, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

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 19 C.F.R. part 353 (1997).

Final Determination: We determine that certain cut-to-length steel plate (CTL plate) from the Russian Federation is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

Since the preliminary determination in this investigation (*Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the Russian Federation*, 62 FR 31967 (June 11, 1997)), the following events have occurred:

In June 1997, we verified the Severstal's questionnaire responses. On July 23, 1997, the Department issued its report on verification findings. Petitioners and Respondent, Severstal, submitted case briefs on July 31, 1997, and rebuttal briefs on August 5, 1997. A public hearing was not requested nor held.

On August 8, 1997, the Department provided interested parties the opportunity to submit additional publicly-available information (PAI) from surrogate countries to value certain factors of production. The Department received responses on August 15, 1997, and comments on August 22, 1997.

Scope of Investigation

The products covered by this investigation are hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from the subject merchandise within the scope of the petition is grade X–70 plate. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive. *See* memorandum on *Scope of Investigations on Carbon Steel Plate*, from Joseph Spetrini to Robert S. LaRussa (October 24, 1997).

Period of Investigation (POI)

The POI is April 1, 1996 through September 30, 1996.

Separate Rates

Severstal has requested a separate, company-specific rate. The claimed ownership structure of Severstal during the POI is that of a publicly owned joint stock company, where the state owned 20% of the shares.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*) and amplified in *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*). Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if a respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

An individual company may be considered for a separate rate if it meets the following *de jure* criteria: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. Severstal has placed on the administrative record a number of documents demonstrating absence of *de jure* control. These documents include laws, regulations, and provisions enacted by the government of the Russian Federation, describing the deregulation of Russian enterprises as well as the deregulation of the Russian export trade (except for a list of products that may be subject to government export constraints which Severstal claims, and the Department verified, do not include subject merchandise). Specifically, Severstal provided English translations of the laws and regulations governing their enterprises. These laws and regulations authorized Severstal to make its own operational and managerial decisions during the POI. *See Separate Rates Memorandum*, dated June 3, 1997.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices (''EP'') are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the

respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Severstal asserted, and we verified, the following: (1) it establishes its own EPs; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it selects its own management; 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, Severstal's questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. During verification proceedings, Department officials viewed such evidence as sales documents, company correspondence, and bank statements. This information supports a finding that, during the POI, there was a *de facto* absence of governmental control of export functions. In addition, we determined that Severstal had autonomy from the government in making decisions regarding the selection of management during the POI. Therefore, we have concluded that Severstal is entitled to a separate rate. *See Separate Rates Memorandum,* dated June 3, 1997.

The Russia-Wide Rate

U.S. import statistics indicate that the total quantity and value of U.S. imports of certain carbon steel plate from the Russian Federation is greater than the total quantity and value of steel plate reported by all Russian companies that submitted responses. Given this discrepancy, we conclude that not all exporters of Russian carbon steel plate responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the Russia-wide rate—to all exporters in the Russian Federation (other than Severstal), based on our presumption that those respondents who failed to respond constitute a single enterprise and are under common control by the Russian Federation government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026 (April 30, 1996).

This Russia-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 the information drawn from the petition.

As discussed above, all Russian exporters that do not qualify for a separate rate are treated as a single enterprise. Because some exporters of the single enterprise failed to respond to the Department's requests for information, that single enterprise is considered to be uncooperative. In such situations, the Department generally selects as total facts available either the higher of the average of the margin from the petition or the highest rate calculated for a respondent in the proceeding. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Persulfates From the People's Republic of China,* 96 FR 27222 (May 19, 1997). In the present case, the average margin in the petition is higher than the one calculated rate. Accordingly, the Department has based the Russia-wide rate on information in the petition. In this case, the average petition rate is 185.00 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 reasonable at the Department's disposal. The Statement of Administrative Action (SAA), accompanying the URAA (H. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1996)), clarifies that the petition is ''secondary information'' and that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870.

In accordance with section 776(c) of the Act, we corroborated the margins in the petition to the extent practicable. The information contained in the petition shows that petitioners calculated export price based on two methods: (1) the import values declared to the U.S. Customs Service; and (2) an average export price derived from actual U.S. selling prices known to petitioners. 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 were 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.

The information in the petition with respect to the normal value (NV) is based on factors of production used by the petitioner in the production of steel plate. Petitioner submitted usage amounts for materials, labor and energy, adjusted for known differences in production efficiencies. To account for differences between the production processes of petitioners and potential respondents, Petitioner submitted three cost models in the petition: (1) Basic Oxygen Furnace (BOF) Cost Model; (2) Open-Hearth Furnace Cost Model; and (3) Weighted Average Normal Value of the BOF and Open-Hearth methods.

The margins in the petition, which ranged from 139.97 to 230.38 percent, were obtained by Petitioners by comparing the normal values to the export price developed from customs values and to export prices developed from actual U.S. price quotes. For each method, petitioners submitted estimated dumping margins for the BOF method, the open-hearth method and a weighted-average of the two. *See* Corroboration Memorandum, dated June 3, 1997.

Fair Value Comparisons

To determine whether the sale of certain carbon steel plate from the Russian Federation sold to the United States by the Russian exporters receiving separate rates were made at less than fair value, we compared the EP to the NV, as specified in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

For Severstal, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the factors of production.

We corrected Severstal's data for errors and minor omissions found at verification and submitted to the Department. We calculated EP in accordance with our preliminary calculations, except that we: (1) corrected for the errors found at verification as submitted by Severstal on July 18, 1997, and (2) corrected input freight factors for limestone and ferroalloy purchases based on findings from verification, *see* Comments below.

Normal Value

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market economy country and that are significant producers of comparable merchandise.

In our preliminary determination, we selected Brazil as our surrogate country. Brazil is an appropriate country for the reasons set forth in our preliminary determination. *See* the January 27, 1997 memorandum from the Office of Policy discussing our selection of surrogate countries for Russia (*Policy Memo*). Since we find no compelling reason to change this selection, we have continued to base FMV on the values of the factors of production as valued in Brazil.

Factors of Production

We calculated NV based on factors of production cited in the preliminary determination, making adjustments for specific verification findings. *See Final Determination Calculation Memorandum,* dated October 24, 1997. To calculate NV, we multiplied the verified amounts for the factors of production by the appropriate surrogate value for the different inputs. We have used the same surrogate sources as in the preliminary determination with the exception of 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 Companhia Siderurgica de Tubarao's (CST) and Usinas Siderurgicas de Minas Gerais' (Usiminas) financial statements that were placed on the record of this investigation by Severstal. *See* Comment 3, below.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Severstal for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by Severstal.

Comment 1: Input Freight Factors for Limestone and Ferroalloy Purchases.

Petitioners claim that Severstal falsely reported no transportation costs incurred in connection with its purchases of limestone and ferroalloys for use as raw material inputs. Petitioners state that at verification the Department determined that one of Severstal's two limestone suppliers is located near Severstal's Cherepovets facility, and the other is located a fair distance away. Additionally, Petitioners assert that Severstal has numerous suppliers of ferroalloys located at varying distances from Severstal's facility. Petitioners argue that the failure to report these facts was not an ''inadvertent'' error and the information does not constitute a ''minor'' correction. Therefore, Petitioners argue that the Department should treat Severstal's withholding of this information as a failure to provide requested information in a timely fashion and an impediment to this proceeding. Petitioners rely on *Titanium Sponge from the Russian Federation; Notice of Final Results of Antidumping Duty Administrative Review,* 61 FR 58525 (Nov. 15, 1996) (*Titanium Sponge from Russia*) to argue that the Department may not accept this new information at verification, stating that ''the Department accepts new information at verification only when (1) the need for that information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record.'' Furthermore, Petitioners argue that, because Severstal did not act to the best of its ability in responding to the Department's requests, the Department should apply adverse facts available by calculating freight for both limestone and ferroalloys as originating from the most distant suppliers of each input.

Severstal argues that the use of ''facts available'' is not appropriate in this situation as Severstal, who has never before been involved in a U.S. antidumping proceeding and has never before faced data-gathering demands of such intensity, submitted a massive amount of data, the overwhelming bulk of which was verified. Severstal argues that in the limited amount of time to prepare its responses it focused on the major inputs. Furthermore, Severstal asserts, because one of the major sources of limestone is located in the immediate vicinity of Severstal's steel mill, it is not surprising that it overlooked the more distant source in preparing its response. Additionally, Severstal argues that it is the Department's standard to accept such corrected data.

Department Position

We agree with Petitioner that the Department must resort to facts available to calculate freight for ferroalloys. Section 776(b) of the Act provides that adverse inferences may be used if a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. Severstal reported no transportation costs for its purchase of ferroalloys despite the fact that none of the suppliers of ferroalloys are located in the vicinity of Severstal's steel mill. Therefore, for the final determination, we have used the greatest reported distance to calculate freight for ferroalloys as adverse facts available.

However, based on the fact that a major source of limestone is located in the immediate vicinity of Severstal's steel mill, we agree with Severstal that the other source was a mere oversight and constitutes an inadvertent error. Therefore, we did not use the greatest distance to calculate freight for limestone. Instead, we have used, as adverse facts available, a simple average of the two verified distances to calculate transportation costs incurred with Severstal's purchase of limestone.

The submission of these corrections is not the same as the submission of data, rejected by the Department in *Titanium Sponge from Russia,* where a party claimed a by-product deduction at verification. Severstal's information, contrary to Petitioners' assertions, constitutes a minor correction to the information placed on the record by Severstal and it has a negligible impact on the weighted-average margin calculation. Therefore, we have accepted this information. However, as stated above, we have used facts available to calculate freight for both limestone and ferroalloys in the final determination because Severstal failed to provide the requested information in timely fashion.

Comment 2: Non-Metallic Waste at the BOF and Recycled Materials at the Open Hearth Furnace.

Petitioners argue that the information first submitted at verification that allegedly corrects ''minor errors'' in Severstal's reported non-metallic waste offset at the basic oxygen furnace (BOF) and recycled materials offset for the open hearth furnaces should be rejected because it does not correct clerical or minor errors in Severstal's original submission and it is untimely, unclear, and incorrect. In addition, Petitioners argue that Severstal's corrected

information changes the reported volume of recycled materials at the open hearth.

Severstal does not insist that the offset for non-metallic waste at the BOF be adopted because Severstal has come to the conclusion that it erred in including this information in its correction letter provided to the verifiers. Severstal has since determined that the non-metallic waste amounts reported in its BOF ledger are not included as offsets by the company when calculating its cost of production of products for which that shop is utilized. However, Severstal argues that the Department should make the requested correction for the offset for recycled materials at the open hearth furnace. Severstal explains that it simply made an error when manually preparing the database for submission, which it corrected in its June 16, 1997 letter of verification corrections. Severstal argues that it is the Department's well-established practice to accept the correction of such errors, especially in a case where the overwhelming volume of submitted data was verified as accurate.

Department Position

We agree with Petitioners that the new information claiming an offset for non-metallic waste at BOF should be rejected since the non-metallic waste amounts are not included as offsets by Severstal. Therefore, we did not make an adjustment in calculating normal value.

Based on the results of verification, we agree with Severstal regarding the correction of the recycled materials at the open hearth. The revision corrects an error that arose from the manual extraction of data from the open hearth's records which we verified (*see* Verification Report, dated July 23, 1997). We have corrected for this error in the final determination.

Comment 3: Factory Overhead, SG&A, and Profit.

Petitioners claim that the Department's preliminary results did not include all factory overhead costs and that a dumping margin cannot accurately be calculated without the inclusion of non-depreciation overhead costs. Although Petitioners have not been able to find this information, they provided one integrated producer's financial statement (Pohang Iron & Steel Co., Ltd. (''POSCO'')) which provides a detailed list of the types of expenses incurred as manufacturing costs. Petitioners urge the Department to either use the percentages from POSCO's financial statement as facts available to approximate the proper amount of factory overhead costs, or use its resources to find this additional information.

Severstal argues that the Department should reject Petitioners' proposal to use factory overhead values obtained from the financial reports of a steel company in Korea. Respondents contend that Korea is not an appropriate surrogate country for Russia, and it was never considered by the Department or the parties in this (or any other) investigation as a potential surrogate. Severstal cites *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews,* 57 FR 28360 (June 24, 1992) (*Antifriction Bearings*) where the Department refused to use a surrogate overhead rate from another country because it was not among the surrogate countries cited for that review. Additionally, Severstal claims that to stray from Brazil to Korea would violate the Department's preference for consistency in the calculation of factor values, which is referenced through its reliance on data in a single surrogate country if possible. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* 57 FR 21058 (May 18, 1992) (*Carbon Steel Butt-Weld Pipe Fittings*). Severstal further argues that while only depreciation is identified in the financial reports of the Brazilian steel producers whose financial information the Department used in the Preliminary Results, the Department merely accepted Petitioners' own proposal in using this data as the basis for calculating the factory overhead ratio.

Furthermore, Severstal argues that the Department incorrectly utilized the data from surrogate country steel producers' financial statements for periods outside the period of investigation (POI). Severstal argues that, consistent with the Department's prior practice, the Department should use financial data contemporaneous with the POI. Severstal cites several cases where the Department has noted its policy to use contemporaneous surrogate values.

Severstal also provided the 1996 financial statements of the surrogate country companies and provided recalculated ratios. Severstal additionally alleges that the Department made two clerical errors in calculating the SG&A and profit ratios. Severstal states that, when calculating the SG&A factor, the Department incorrectly included profit sharing expenses. Severstal states that these expenses do not represent actual expenses incurred by the companies but, rather, reflect the value of profits shared with employees and management, dividend distributions to employees, and annual taxes on net income. Additionally, Severstal states that the Department made a mathematical error in calculating the average profit ratio. Severstal requests that, if the Department chose not to utilize the contemporaneous data, the Department should at least utilize the correct ratio of 25.56 percent as opposed to the 26.65 value utilized in the preliminary determination.

Department Position

We agree with Petitioner that our preliminary results did not include all factory overhead costs; however, we disagree with Petitioner's suggestion to use the data from a Korean steel producer's financial statement to calculate a factory overhead ratio. It is the Department's preference to use a single surrogate country as the source of data in an NME investigation. *See Carbon Steel Butt-Weld Pipe Fittings.* Furthermore, it is the Department's practice to only use data of those countries listed as potential surrogates identified in the *Policy Memo. See Antifriction Bearings.* Korea was never identified as a potential surrogate for the Russian economy. Therefore, we have continued to use Brazilian data for the final determination.

We agree with Severstal that the Department should use financial data contemporaneous with the POI. Based on the submitted information and the Department's own research, we agree with Severstal that the financial data from the 1996 income statements of the two Brazilian companies used in the preliminary determination, CST and Usiminas, are the most appropriate surrogate information available to calculate the percentages for overhead, SG&A, and profit for our final determination.

In contrast to our preliminary determination, for this final determination, in order to ensure that all costs are properly accounted for, in accordance with our practice we revised the overhead ratio to include employee profit sharing. Despite the manner in which labor costs are packaged (i.e., either through straight salary, profit sharing, etc.), total labor costs remain the same to the employer. This includes all profit sharing expenses. *See Porcelain-on-Steel Cookware from Mexico: Notice of Final Results of Antidumping Duty Administrative Review,* 62 FR 25908 (May 12, 1997), where the Department determined that profit sharing expense relates to the compensation of direct labor. Labor is

captured in the cost of manufacturing which is part of the cost of sales. Thus, we have included profit sharing in overhead. However, if a company broke out profit sharing between employees and management, as CST has done, we included management profit sharing in the SG&A calculation and employee profit sharing in the overhead calculation. *See Final Determination Calculation Memorandum,* dated October 24, 1997.

Consistent with prior Department practice, we have continued to include social contributions in SG&A for the final determination. *See Final Determination Calculation Memorandum,* dated October 24, 1997; *see also Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determinations: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Brazil,* 58 FR 7080 (February 4, 1993).

Comment 4: Energy.

In our preliminary determination, we used a ''theoretical fuel'' ratio submitted by Severstal to derive values for various energy inputs. Petitioners allege that this approach is flawed for several reasons, particularly with respect to inputs of energy gases. First, Petitioners assert that the Department used numbers that represent the amount of energy or fuel theoretically necessary to create the energy instead of the energy generated (caloric output) by the particular type of fuel. Petitioners argue that the calculations should be based on caloric yield because the heat requirements of the steelmaking process demand a certain caloric yield regardless of the amount of energy that may have been used to create the fuel before it was purchased by the steel producer. Second, Petitioners argue that it is not clear what Respondents' reported figures represent because Severstal did not provide a citation or supporting documentation for its table. Third, Petitioners claim that the table used by the Department is flawed because the ratios representing the energy needed to create each fuel are the same as the ratios representing the energy yield of the resulting product. In other words, Petitioners conclude it appears as though every fuel listed has exactly the same energy efficiency.

Severstal agrees that the Department may use the ''theoretical fuel'' ratios to derive the values for energy sources. Furthermore, Severstal claims that, because the ''theoretical fuel'' data in the first table to which Petitioners object was based on a scientific study and made available for the Department at verification, there is no reason to doubt its accuracy. However, Severstal does not object to the proposal to use the second table (showing the quantity of energy (in calories) generated by each type of fuel) to convert to an equivalent consumption value in terms of natural gas usage.

Department Position

Based on our findings at verification, all gas input factors are reported in cubic meters needed to produce one ton of plate. Usage rates were adjusted to account for yields and waste. In obtaining surrogate value information, we were able to find values for natural gas in cubic meters based on Brazilian import statistics, but were unable to obtain surrogate values for other input energy sources on the same basis. Therefore, in order to ensure that the value of energy was consistent across all energy sources in calculating normal value, we chose to convert the other energy sources into natural gas equivalents.

In response to Petitioners' argument that the Department should use the caloric output of fuels to determine the value of these fuels, we have used factor inputs as reported on a caloric output basis. We simply converted the surrogate value for natural gas into other gas equivalents using public conversion rates. Therefore, we have continued to use the methodology from our preliminary determination as this methodology is an accurate means of valuing energy usage.

Comment 5: Reported Factor Usage Data.

Petitioners allege that the production factor data submitted by Severstal are distorted in that they report the same factors of production for multiple CONNUMs. Petitioners claim that Severstal did not submit its factor usage data at the CONNUM-specific level of detail requested by the Department and that Severstal reported the same factor input values for multiple CONNUMs. Petitioners are primarily concerned with Severstal's failure to distinguish the different costs. Petitioners argue that the Department should adjust Severstal's submitted factor usage data to account for differences in production costs. Petitioners argue that in the past, the Department has adjusted information to correct for data which did not conform to the level of specificity required and cite *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea,* 62 FR 18404 (April 15, 1997) (*Carbon Steel Flat Products from Korea*) as an example where the Department adjusted the respondent's reported costs because its reporting method did not account for certain differences in physical characteristics. Petitioners argue that some products cost more to produce and that the Department should assign certain products the highest total calculated cost for any Severstal product.

Severstal argues that it explained the calculations to the Department and the data was verified. Severstal asserts that it does not maintain its books in the normal course of business according to the product definitions established by the Department in creating CONNUMs, and that it submitted its factor data on the basis of the company books and records. Severstal claims that it reported its costs to the degree of specificity allowed by its records, and that in situations where a respondent reported its costs in as much detail as its normal accounting system would allow, the Department has repeatedly held that ''adjustment'' of the reported data would be inappropriate. Severstal further argues that *Carbon Steel Flat Products from Korea* does not support Petitioners' point. In that case, Severstal argues, the Department adjusted the respondents's cost data only where the respondent had weight-averaged cost data for all products that contained certain product characteristics. For costs associated with other physical characteristics, Severstal contends, the Department concluded that the respondent reported costs in as much detail as its accounting system allowed and that any costs associated with other physical characteristics were captured and allocated to all products. Severstal references several other cases to support this interpretation.

Finally, Severstal argues that if the Department were to inflate the reported factors for one of the products sold, it must somehow compensate by reducing the factors for other subject merchandise because the total quantity of factors consumed in the production of the subject merchandise shipped to the United states is fixed and verified. Severstal alleges that any other response by the Department would not be an ''adjustment,'' but would rather constitute a punitive inflation of Severstal's reported factors.

Department Position

We agree with Severstal. The Department has in the past, as Petitioners correctly point out, adjusted information to correct for data which did not appropriately account for physical characteristics. However, even in cases where a company has been unable to provide information at the

level of detail requested by the Department, we still accepted the reported costs where we were satisfied that these costs nonetheless reasonably reflected the actual costs of producing the subject merchandise during the POI.

For the same reasons outlined in *Carbon Steel Flat Products from Korea and in Final Results of Antidumping Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 61 FR 13815 (March 28, 1996), we agree with Severstal that its reported costs were reasonable. In these cases, we concluded that the respondent's methodology was reasonable given the nature of its cost accounting system, its verified inability to determine specific costs, and the conservative method in which the costs were reported.

In this case, Severstal has reported product-specific costs from its normal cost accounting system, which we verified reasonably reflect the actual usage of materials to produce the merchandise under investigation. Furthermore, given the nature of Severstal's cost accounting system, our verification findings confirmed Severstal's inability to determine specific costs. The instant situation is very different from that in *Carbon Steel Flat Products from Korea* where we determined that the respondent did not appropriately account for two characteristics where the respondent derived a general weighted-average cost and applied it to all merchandise that contained the two certain physical characteristics. This weight-averaged cost was contrary to the respondent's normal cost accounting system, resulted in a distortion of the cost of manufacturing, and differentiations were lost through averaging. For these reasons we calculated adjustment factors in that case. However, this clearly is not the case here.

In regards to the other physical characteristics in *Carbon Steel Flat Products from Korea,* the Department found that costs were captured and allocated to all products because the respondent reported costs in as much detail as its normal accounting system provided, as Severstal has in this case. Furthermore, Severstal submitted its factor usage ratios as recorded in the company books and records. As stated above, based on our findings at verification, we have determined that Severstal's reported costs reflect the actual costs as recorded in its normal accounting system and reasonably reflect the cost of producing the merchandise. Therefore, we did not make any adjustments in this final determination.

Comment 6: Indirect Materials and Energy in Factory Overhead.

Petitioners argue that the Department should utilize the value of U.S. exports to Brazil for certain energy and indirect materials which were not valued for the preliminary determination. Petitioners provided the Department with publicly available information taken from U.S. Census statistics for exports to Brazil for 1996 and claim that in the absence of alternative data, the Department should use data on U.S. exports of certain indirect inputs to Brazil to determine the appropriate surrogate value.

Severstal states that because these materials and types of energy are not directly related to the production of the merchandise under investigation, the Department properly treated these inputs as overhead expenses. Severstal cited several cases including *Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Brake Drums and Brake Rotors From the People's Republic of China,* 61 FR 53190 (Oct. 10, 1996) (*Brake Drums and Rotors from the PRC*); *Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 61 FR 53711 (Oct. 15, 1996) (*Sulfanilic Acid from the PRC*); and *Porcelain-on-Steel Cooking Ware From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 4979 (Feb. 3, 1997) (*Porcelain-on-Steel Cooking Ware from the PRC*), as cases where the Department stated that its general policy is not to calculate surrogate values of indirect inputs separately, but instead is to include these inputs as part of the overhead expenses.

Department Position

We agree with Severstal that these inputs are not materials directly incorporated in the production of steel and thus are not part of materials consumed. Therefore, consistent with our preliminary determination, we have treated these inputs as part of factory overhead in the final determination.

Comment 7: Critical Circumstances.

Severstal alleges that the Department acted unlawfully in finding critical circumstances in the preliminary determination. They base their argument on the fact that the 1994 URAA added a new element to the critical circumstances analysis that the importer ''knew or should have known'' that ''there was likely to be material injury by reason of'' the LTFV sales of the subject merchandise. Severstal states that because the ITC preliminarily found only a threat of material injury rather than actual injury, the Department may not impute that the importers had knowledge that these sales would cause material injury to a U.S. domestic industry. Severstal alleges that the Department's preliminary decision is unlawful and contrary to its determination in *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 9162 (Feb. 28. 1997) (*Brake Drums and Rotors*) where the Department stated that ''when the ITC has preliminarily found no reasonable indication that a U.S. industry is experiencing present material injury by reason of the dumped subject merchandise, but only a threat of such injury, the Department has determined that it is not reasonable to conclude that an importer knew or should have known that its imports would cause material injury * * *.''

Severstal further argues that the Department's reliance on the increase in the volume of imports and the magnitude of the margins is not only contrary to the Department's previous practice but also redundant because these factors are also reviewed when determining whether there has been massive imports during a short period of time and whether the importer had knowledge of LTFV sales. Therefore, Respondents asset, the Department has collapsed the first prong of its analysis of the issue with the second and third prongs of the analysis to incorrectly conclude that critical circumstances existed in the preliminary determination.

Petitioners rebut Severstal's argument that the Department improperly found critical circumstances for the preliminary determination. Petitioners note that it is a well established practice for the Department to impute knowledge of material injury based on dumping margins of greater than 25 percent.

Petitioners argue that the Department's negative finding in *Brake Drums and Rotors from the PRC-Final* does not preclude it from making an affirmative finding in the current case because (1) the SAA and the URAA are silent as to how the Department is to make a finding of importer knowledge of material injury and, (2) it is within the Department's discretion to select a reasonable and administrable approach. Petitioners also argue that an ITC threat determination does not mean that an importer of Russian CTL plate cannot have known that there was likely to be material injury by reason of dumped imports during the critical

circumstances period. Petitioners argue that the basis for an affirmative threat determination by the ITC is ''whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted'.

Department Position

We agree with Petitioner and continue to find critical circumstances in the final determination.

Section 735(a)(3) of the Act provides that if the final determination is affirmative, then that determination shall also contain a finding of whether: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

Because there is no history of dumping and material injury by reason of dumped imports for cut-to-length steel plate, we conducted our analysis under section 735(a)(3)(A)(ii) of the Act (importer knowledge of dumping and material injury).

1. Importer Knowledge of Dumping

In determining whether an importer knew or should have known that the exporter was selling the plate at less than fair value, the Department normally considers margins of 15 percent or more sufficient to impute knowledge of dumping for constructed export price (CEP) sales, and margins of 25 percent or more for export price (EP) sales. *See, e.g., Preliminary Critical Circumstances Determination: Honey from the People's Republic of China (PRC),* 60 FR 29824 (June 6, 1995) (*Honey*). Since the company-specific margins for EP sales in our preliminary determination for CTL plate are greater than 25 percent for Severstal, we have imputed knowledge of dumping.

2. Massive Imports

To determine whether imports were massive over a relatively short time period, the Department typically compares the import volume of the subject merchandise for the three months immediately preceding and following the initiation of the proceeding. *See* 19 C.F.R. 353.16(g). Pursuant to 19 C.F.R. 353.16(f)(2), the Department will consider an increase of 15 percent or more in the imports of the subject merchandise over the relevant period to be massive. As noted, because imports of the subject merchandise increased 145 percent during the relevant period, we have determined that imports have been massive.

3. Importer Knowledge of Material Injury

The statute and the Statement of Administrative Action which accompanies the Uruguay Round Agreements Act (SAA) are silent as to how we are to make a finding that there was knowledge that there would be material injury. Therefore, Congress has left the method of implementing this provision to the Department's discretion.

In determining whether an importer knew or should have known that there would be material injury by reason of dumped imports, we normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, we will determine that a reasonable basis exists to impute importer knowledge that there would be material injury by reason of dumped imports during the critical circumstances period—the 90-day period beginning with the initiation of the investigation (*see* 19 C.F.R. 353.16(g)). If the ITC preliminarily finds threat of material injury, we would normally not find knowledge of injury. However, in this case, the magnitude of the margins and increase in imports are so great that we have concluded that the importer knew or should have known that these sales of subject merchandise to the U.S. would cause material injury.

In this case, imports of Russian plate increased 145 percent in the three months following the initiation of the investigation when compared to the three months immediately preceding initiation, or almost ten times the level of increase needed to find ''massive imports'' during the same period (*see* below). Furthermore, we preliminarily determined that margins of 53.81 percent exist for Severstal. Based on the ITC's preliminary determination of threat of injury, the massive increase in imports noted above, and the high preliminary margins, we have determined that the importer knew or should have known that there would be material injury by means of sales of the subject merchandise at less than fair value.

In response to Severstal's allegation, we did not collapse the first prong of our analysis with the second and third prongs. Importer knowledge of sales at less than fair value, importer knowledge of injury, and massive imports are the three separate criteria considered in determining whether critical circumstances exist. However, some of the factors we examine to determine whether each of these criteria are met may be relevant to more than one of the criteria. For example, the magnitude of the margins is relevant to the importer's knowledge of sales at less than fair value and the increase in import volumes is likewise relevant to the massive imports criterion. However, both of these factors are also relevant to the knowledge of injury criterion. If the margins and the increase in imports are very large, it is reasonable for us to assume that the importer knew that such an increase in imports at such low prices would injure the U.S. domestic industry.

In response to Severstal's argument regarding *Brake Drums and Rotors,* the Department, in deciding the issue of importer knowledge of material injury in *Brake Drums and Rotors* was faced with very different facts and circumstances. In that case, the company specific margins were all under 15% for Rotors, except for one company with a margin of 16.35%. Moreover, for that one company, the increase of its imports to the U.S. was under 15%. Thus, the circumstances in *Brake Drums and Rotors,* where the ITC finding of threat of injury was coupled with comparatively minimal company-specific margins and absence of massive imports, are very different from those in the present investigation.

Thus, because we have determined in this case that the importer knew or should have known that Russian exporters were selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and because there have been massive imports of the subject merchandise over a relatively short time period, we have determined that critical circumstances exist for Severstal.

4. Unexamined Respondents/Russia-Wide Entity

As stated above, in a nonmarket economy case, the Department presumes that those respondents who failed to respond to the Department's questionnaire constitute a single enterprise and are under common control by the Russian government. Therefore, for companies subject to the Russia-wide rate (*i.e.,* companies which did not respond to the Department's questionnaire), as facts available, we are imputing knowledge based on the Russia-wide rate.

As noted above, we have determined, based on facts available, that importers knew or should have known that there would be material injury to the U.S. cut-to-length steel plate industry based on the ITC's preliminary determination of a reasonable indication of present material injury. In the absence of shipment data for the Russia-wide entity, we have determined based on facts available and making the adverse inference permitted under section 776(b) of the Act, that because this entity did not provide an adequate response to our questionnaire, there were massive imports of subject merchandise. We further note that the record indicates a post-filing surge in U.S. cut-to-length steel plate imports from Russia which is not accounted for by the cooperating respondent, Severstal. Finally, the Russia-wide margin of 185 percent exceeds the 25 percent threshold for imputing a knowledge of dumping to the importers of the merchandise. Therefore, for the Russia-wide entity, critical circumstances exist with respect to imports of subject merchandise.

Therefore, we find that critical circumstances exist for cut-to-length carbon steel plate sales by all Russian exporters.

Continuation of Suspension of Liquidation

On October 24, 1997, the Department signed a suspension agreement with the Ministry of Foreign Economic Relations and Trade of the Russian Federation (the Agreement). Therefore, we will instruct Customs to terminate the suspension of liquidation of all entries of cut-to-length carbon steel plate from the Russian Federation. Any cash deposits of entries of cut-to-length carbon steel plate from the Russian Federation shall be refunded and any bonds shall be released.

On October 14, 1997, we received a request from Petitioners requesting that we continue the investigation. We received a separate request from the United Steelworkers of America, an interested party under section 771(9)(D) of the Act, on October 14, 1997. Pursuant to these requests, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following margins of dumping:

Manufacturer/producer/exporter	Weight-average margin percentage
Severstal	53.81
Russia-Wide Rate	185.00

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's injury determination is negative, the Agreement will have no force or effect, and the investigation shall be terminated. *See* section 734(f)(3)(A) of the Act. If, on the other hand, the Commission's determination is affirmative, the Agreement shall remain in force but the Department shall not issue an antidumping duty order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsection (d) and (1) of the Act, and the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. *See* section 734(f)(3)(B) of the Act.

This determination is published pursuant to section 735(d) of the Act.

Dated: October 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30396 Filed 11–18–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain helical spring lock washers (HSLWs) from the People's Republic of China (PRC) in the **Federal Register** on July 11, 1997 (62 FR 37192). This review covers sales of this merchandise to the United States during the period October 1, 1995 through September 30, 1996. We gave interested parties an opportunity to comment on our preliminary results. Based upon analysis of the comments received, we changed the results from those presented in the preliminary results of the review.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Tamara Underwood 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.

Background

The Department published the preliminary results of this review of the antidumping duty order on HSLWs from the PRC in the **Federal Register** on July 11, 1997 (62 FR 37192). On August 11, 1997, petitioner, Shakeproof Industrial Products Division of Illinois Tool Works (SIP), and respondent, Zhejiang Wanxin Group, Co., Ltd. (ZWG), submitted comments on the Department's preliminary results. On August 18, 1997, petitioner and respondent submitted rebuttal comments. The Department rejected respondent's August 11, 1997 submission because it contained new information. Respondent resubmitted comments on August 22, 1997. We held a hearing on September 22, 1997. On October 28, 1997, the Department placed new information on the record and gave interested parties an opportunity to comment pursuant to 19 U.S.C. section 1677m(g). The respondent submitted comments on October 31, 1997. The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round of Agreements Act. In addition, unless otherwise stated, all citations to the Department's regulations are references to the regulations as codified at 19 CFR Part 353 (1996).

Scope of Review

The products covered by this review are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over the larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to this review are currently classifiable under subheading 7318.21.0030 of the Harmonized Tariff Schedule of the United States (HTS). Although the HTS subheading is provided for convenience and Customs purposes, the written description of the scope of this proceeding is dispositive.

This review covers one exporter of HSLWs from the PRC, ZWG, and the period October 1, 1995 through September 30, 1996.

Analysis of Comments Received

Comment 1: Use of Import Prices to Value Steel Inputs.

Petitioner, SIP, asserts that the Department should limit the use of imported steel prices to valuing the imported steel actually used. Petitioner argues that, in accordance with section 1677b(c)(1) of the Act, the Department must determine normal value (NV) ''on the basis of the value of the factors of production utilized in producing the merchandise.'' Petitioner contends that, although the Department used non-surrogate, market-economy actual prices in *Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China* (56 FR 55271, October 25, 1991)(*Fans*), and affirmed in *Lasko Metal Products* v. *United States,* 43 F .3d 1442 (Fed. Cir. 1994)(*Lasko*), the Department only applied these values to the actual imports. Petitioner states that the Department relied on surrogate values to value all non-imported inputs. Petitioner claims that the use of import prices to cover non-imported factor inputs is an arbitrary extension of the Department's authority.

Petitioner contends that the import quantities of steel are not the same as the domestically-sourced quantities of steel and that the Department should value these quantities as two separate factors of production. Petitioner states that the Act defines ''factors of production'' to include the ''quantities of raw materials employed.'' Petitioner contends that, although the Act and *Lasko* affirm that the Department can consider non-surrogate, market-economy actual prices to be the best information and use those prices, neither the Act nor *Lasko* provides justification for the Department's use of values for one factor as the value for another factor, even if both factors are steel.

Petitioner asserts that accuracy is not enhanced by using import prices for valuing all steel inputs. Petitioner states that the goal of the Act is to approximate the costs where non-market economy (NME) costs do not reflect market-determined prices. Petitioner claims that the Department cannot use import prices to accurately and fairly reflect the value of the domestically-sourced steel. Petitioner takes issue with the proposed antidumping duty regulations on this point (*Antidumping Duties; Countervailing Duties; Notice of Proposed Rulemaking* (61 FR 7309, 7345, February 27, 1996)), and contends that it is not enough to provide that the market-economy price may be disregarded ''where the amount purchased from a market economy supplier is insignificant.'' Petitioner suggests that it should be the other way around: at most, only if the amount purchased within the NME is insignificant, should the Department use the non-surrogate, market-economy actual price to value all steel. Petitioner cites the Department's practice of valuing inputs based on the weighted average of prices paid in constructed value (CV) market economy cases. Petitioner cites *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Korea* (62 FR 25895, 25897, May 12, 1997) as an example of this practice.

Petitioner also asserts that, if the Department values all steel at the import price, it can drastically distort the NME producer's costs when, for example, the NME producer uses imported steel to fulfill half of its steel requirements and domestic steel to fulfill the remainder of its steel requirements. Petitioner adds that the major defect in the Department's approach is that it fails to recognize that an NME producer will import factors at prices which are less than the prices it would otherwise pay for the input. Petitioner concludes that the Department's methodology does not promote either accuracy or fairness.

Respondent asserts that the Department correctly used the imported steel price to value all of its steel inputs in the preliminary results and should continue to do so in the final results. Respondent states that the imported steel meets all criteria established by the Department for using market-economy prices and that the Department is obliged to use the price paid for that input to value all of the respondent's consumption of that input. Respondent argues that the Department's methodology in the preliminary results is fully supported by the Department's prior practice, the proposed and final regulations, the court decisions, and the statute. Respondent maintains that the Department's established practice of valuing all of the production input using the NME producer's actual import prices for that input is legitimate and does enhance accuracy, as affirmed in *Lasko*: ''Where we can determine that an NME producer's input prices are market determined, accuracy, fairness, and predictability are enhanced by using those prices. Therefore, using surrogate values when market-based values are available would, in fact be contrary to the intent of the law.'' 43 F.3d 1442, 1446 (Fed. Cir. 1994). Respondent maintains that the decision in *Lasko* confirms that surrogate values are merely the best approximation of what the NME producer might pay if the NME producer were operating in a market economy. Respondent also adds that the court stated in *Lasko* that the Department's practice is a ''legitimate policy choice . . . in interpreting and applying the statute.'' 43 F.3d at 1446. Respondent claims that *Lasko* upheld the Department's market-economy input methodology as consistent with the statute. Respondent also cites the Department's position in the *Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products from the People's Republic of China* (62 FR 1798, 1710, January 13, 1997)(*Melamine*), which states that ''the market economy price is the most appropriate basis for determining the value of the [input] purchased from the PRC suppliers.'' Respondent concludes that when the NME producer actually purchases a market-economy input and pays in market economy currency, there is no need to use the best approximation.

Respondent asserts that the CV calculation methodology referenced by petitioner is irrelevant to NME cases. Respondent states that, pursuant to 19 U.S.C. § 1677b(a)(2), CV applies to market-economy cases and not to NME cases. Respondent claims that, pursuant to 19 U.S.C. § 1677b(c), the Department is required to use a selected import price or a surrogate price to value an NME producer's production costs. Respondent asserts that petitioner's argument that the Department's practice distorts the NME producer's costs ignores commercial reality and is contrary to the court rulings and the basic principles underlying NME cases. Respondent argues that, contrary to petitioner's argument, NME producers will purchase domestic materials when the domestic price is less than the import price. Respondent claims that in *Sigma Corp.* v. *United States*, 117 F.3d 1401 (Fed. Cir. 1997) (*Sigma*), the court suggested that the Department may not assume that the NME producers purchase domestic materials at a higher delivered price than that for imported materials.

Department's Position

We disagree with petitioner. In general, the purpose of the antidumping statute is to ''determine margins as accurately as possible.'' *Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1991). Section 773 (c)(4) of the Act, the provision for factors of production methodology, was intended to be used when NME prices and costs are unreliable, *i.e.*, not market-based. *See, e.g.*, S. Rep. No. 93–1298, 93d Cong., 2d Sess. 174 (1974). The purpose of section 773(c) is to determine what the firm's prices or costs would be if such prices or costs were determined by market forces.

Because the statute does not explicitly address the situation in which an NME producer imports some inputs from market economies, *cf.* 19 U.S.C. § 1677b(c), the Department has determined that if an NME producer reports prices that are based on inputs from market-economy suppliers, it is appropriate to use those prices instead of a surrogate value, if the amounts purchased are meaningful, *i.e.*, they are not insignificant. The Department has applied this practice consistently in recent years, *See Melamine,* 62 FR at 1710, and has received affirmation of this practice in court decisions. *See, e.g., Lasko,* 43 F.3d at 1446, as cited by respondents. The Department subsequently codified this practice in Section 351.408(c)(1) of the *Antidumping Duties; Countervailing Duties; Final Rule,* published in the **Federal Register** on May 19, 1997 (62 FR 27296, 27413) (*Final Rule*). As explained in the background section of the those regulations, the only situation in which we would not rely on the price paid by an NME producer to a market economy supplier is where the quantity of the input purchased was insignificant. *See Final Rule,* 62 FR at 27366.

In factor valuation, the Department has developed practices which emphasize accuracy, fairness, and predictability. The Department stated that ''the simplest example of a value based on market principles in a proceeding involving an NME is a price paid in convertible or market economy currency for an input sourced from a market economy country.'' (*See Fans,* Comment 1.) In this instant case, the amount of steel imported is approximately equal to one-third of the amount used to produce the subject merchandise during the period of review. We consider this to be a meaningful amount, *i.e.*, it is not insignificant, for purposes of using the market-economy input price to value all of the steel used to produce the subject merchandise. In this respect, the Department's determination to value all steel inputs using the market-economy input prices respondent actually paid is consistent with these goals and practices.

Petitioner's contention that imported steel and domestically-produced steel constitute separate factors of production is, in effect, just another way of arguing that we should value them separately. There is no evidence that the imported steel is physically different from the domestically-sourced steel, such that the imported steel should be considered a different factor of production from the domestically-sourced steel.

Therefore, in accordance with the Department's established practice, we continue to use the actual imported steel prices to value steel inputs because these prices represent the actual market-based prices incurred by the respondent in producing the subject merchandise and, as such, are the most accurate and appropriate values for this particular factor for the purpose of calculating NV.

Comment 2: Adjusting Imported Steel Prices for Inflation.

Petitioner asserts that if the Department uses import prices for the final results, the Department should adjust the import prices to reflect the period of review (POR) where those import prices are used to value non-imported steel used to produce HSLWs. Petitioner recognizes that the Department has not made adjustments in the past to values based on market-economy prices, but argues that the Department's approach does not apply to the facts of this case.

Respondent asserts that the prices for imported steel already reflect the POR price levels because ZWG imported the steel during the POR and, therefore, the prices do not need adjustment.

Department's Position: We agree with respondent. Because the prices for the steel imports used to value the steel factor are POR prices, there is no need for any further adjustment to account for inflation.

Comment 3: Movement Expenses for Imported Steel.

Petitioner asserts that the Department should value imported steel by including all costs, such as brokerage and handling fees and transportation from the port to the factory, and adjust these costs for inflation. Petitioner cites *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review* (62 FR 10530, March 7, 1997) (*Sebacic Acid*), where the Department added PRC brokerage and freight from the port to the factory for market-economy inputs. Petitioner states that, although the preliminary results mention that the Department ''made further adjustments to account for the freight costs incurred between the port and ZWG,'' a review of the calculations reveals that this adjustment may have not be included.

Department's Position: We agree with petitioner in part. While we agree that the Department should value the non-surrogate, market-economy actual prices by including all expenses such as brokerage and handling and transportation from the port to the factory, the facts of this case make changes to the preliminary results unnecessary. *See* the proprietary version of ''Memo to the File: Analysis for the Final Results of the Third Administrative Review of Certain Helical Spring Lock Washers from the People's Republic of China,'' dated November 10, 1997 (Final Analysis Memo), for a discussion on movement adjustments.

Comment 4: Steel Scrap.

Petitioner asserts that the Department grossly distorted the net cost of the steel input to the Chinese producer by using a non-surrogate import price for steel and a surrogate value for steel scrap. Petitioner claims that scrap value is based on a relationship between steel (from which the scrap steel generated) and scrap which can be recycled. Petitioner maintains that the steel scrap value in India (the surrogate country) is different from the scrap value in the United Kingdom (the non-surrogate country from which ZWG purchased the steel).

Petitioner suggests that the Department correct this distortion by using the scrap value in the United Kingdom or applying the ratio of scrap value-to-steel value in India to the imported (U.K.) steel value in order to value the Chinese producer's scrap.

Respondent states that the Department correctly valued steel scrap in the preliminary results. Respondent argues that petitioner failed to provide any supporting evidence for its arguments. Respondent maintains that petitioner failed to provide any factual evidence showing that Indian import prices of steel scrap are not appropriate to value the steel scrap generated by ZWG from the consumption of steel wire rod from the United Kingdom. Respondent contends that petitioner further failed to provide any links between steel wire rod prices and steel scrap prices.

Respondent also asserts that the Department must use a surrogate value for steel scrap because respondent sold the steel scrap in the PRC in PRC currency. Respondent adds that

petitioner failed to provide any surrogate information on the value of steel scrap.

Department's Position: We disagree with petitioner's assertions that we distorted the cost of the steel input by valuing steel using actual prices respondent paid for U.K. steel and valuing scrap using surrogate prices from India. Petitioner did not provide any evidence to support its claim of a clear relationship between the prices of steel and scrap. Even if petitioner had established that such a relationship exists, there are no data on the price of scrap imported from the United Kingdom into the PRC.

Moreover, we compared the prices of steel scrap imported into India, Indonesia, Canada, the European Community, the United Kingdom, and the United States during a period contemporaneous with the POR. We were unable to obtain statistics on prices of steel scrap imported into Pakistan, Sri Lanka, and Egypt, which were potential surrogate countries. Our analysis of the Indian imports of steel scrap from the *Monthly Statistics of the Foreign Trade of India* (*MFTI*) show that the price of steel scrap imports into India are not aberrational. (*See* ''Memo to the File: Comparison of Steel Scrap Values for the Final Results of the Third Administrative Review of Certain Helical Spring Lock Washers from the People's Republic of China'' (Steel Scrap Price Comparison Memo), November 7, 1997.) Therefore, in accordance with our established practice of valuing factors of production using surrogate values that are demonstrated to be a reliable reflection of prices during the POR, we are continuing to use Indian import price from *MFTI* to value steel scrap for the final results.

Comment 5: Hydrochloric Acid.

Petitioner argues that the Department included three aberrational values for determining the average hydrochloric acid (HCL) value. Petitioner claims that, because the Department has consistently avoided using aberrational values, these aberrational values should be omitted in the final results.

Respondent asserts that the Department correctly valued HCL using *Chemical Weekly*'s FOB prices, except for freight costs associated with the HCL. Respondent argues that because petitioner failed to identify any specific data as aberrational and failed to provide any supporting evidence for its argument, the Department should reject petitioner's argument.

Department's Position: We agree with petitioner. We analyzed the HCL values published in each of the *Chemical Weekly* issues used for this review and found that two issues, February 14–20, 1996, and April 15–20, 1996, contained values at least 12 times the average value. The values of these two issues seem to be related to exceptionally low quantities of HCL exports. We excluded these values from the final calculations. We found a clerical error in the transcription of one HCL price from the July 27–31, 1996, issue, used to calculate a surrogate value in the preliminary results. Therefore, in the final calculations, we have corrected this price. (*See* Final Analysis Memo.)

Comment 6: Adjustments for Chemical Purity.

Respondent asserts that the Department should calculate the ratio of the purity of chemical inputs consumed to the purity of the chemicals as sold commercially and apply this ratio to the Indian import data. Respondent argues that the Department adopted this methodology in past NME cases and refers to the calculation memoranda for several proceedings, including *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from the People's Republic of China* (62 FR 25899, May 12, 1997) and *Notice of Final Determination of Sales at Less Than Fair Value: Beryllium and High Beryllium Alloys from the Republic of Kazakstan* (62 FR 44293, January 17, 1997).

Petitioner asserts that there is insufficient information on the record for the Department to adjust values for chemical concentration. Petitioner argues that to adjust chemical concentrations, the Department must ascertain the actual chemical concentration from which the value was derived and must determine which additional chemicals were used to dilute or alter the concentration of the chemical. Petitioner argues that the Department must value the additional chemicals. Petitioner adds that even this suggested methodology may result in underreporting the value of the diluted chemical because of the additional costs of performing the dilution, such as labor, equipment, and energy.

Department's Position: We agree, in part, with respondent's assertions that we should make adjustments for chemical purity, as we have done in previous cases. For inputs where the chemical concentration levels of the HTS categories are defined in the Indian import statistics, and where respondent reported chemical concentration levels used, we have made adjustments accordingly.

However, there is no evidence on the record with regard to the chemical concentration levels associated with all chemical inputs in the *MFTI.* Absent any evidence that they do not reflect standard concentrations commonly sold, an adjustment is unwarranted. Where the information regarding the level of chemical concentration is insufficient, we have not made any adjustment. (*See* Final Analysis Memo.)

Comment 7: HCL Concentration.

Petitioner asserts that the Department erred in adjusting HCL concentration. Petitioner argues that the Department purportedly adjusted HCL surrogate values to match the reported concentration although the surrogate data did not indicate concentration level.

Petitioner also asserts that, because the HCL used to make HSLWs is already diluted, the Department must, in calculating the value of the diluted HCL, include the value of the diluting water or chemical.

Respondent contends that the Department will double-count water if it values the water for diluting HCL separately from factory overhead and electricity values, as suggested by petitioner. Respondent claims that the water inputs were included in factory overhead for the production factory and were included and valued in electricity inputs for the plating factory in the preliminary calculations.

Department's Position

We agree, in part, with petitioner regarding an adjustment to the value of HCL based on concentration level. As we mentioned in Comment 6, for inputs where the chemical concentration levels are defined in the surrogate value source, and where respondent reported chemical concentration levels used, we have made adjustments. However, there is no evidence on the record with regard to the HCL concentration level associated with the HCL prices in *Chemical Weekly.* Absent any evidence that they do not reflect standard concentrations commonly sold, an adjustment is unwarranted. Therefore, we have not adjusted the surrogate value for HCL for concentration level in the final results. (*See Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China,* 59 FR 58818, Comment 4, November 15, 1994 (*Saccharin*).)

We disagree with petitioner's assertions that the diluting agent, water or another chemical, should be included in calculating the value of the HCL. We have no basis to conclude that respondent did not report all input amounts required to produce HSLWs, regardless of the manner in which the input enters the production process.

Therefore, the value of the diluting agent is accounted for in the values for water and other chemical inputs.

Comment 8: Freight Costs.

Respondent disputes the Department's addition of freight costs to the imported steel prices and to the input prices obtained from *MFTI* because these prices include foreign inland freight and ocean freight costs. Respondent asserts that, by adding the freight costs to these prices, the Department double-counted the freight costs. Respondent argues that, in *Sigma*, the court prohibited the Department from such double-counting. Respondent suggests that the Department value the freight cost of PRC-sourced material based on the reported distance and method of transportation from the importing seaport to the factory, where that cost is lower than the calculated freight costs based on actual distance and method of transportation from the domestic supplier. Respondent contends that these adjustments are in accordance with the *Sigma* ruling.

Petitioner asserts that a change to the Department's adjustment to material inputs for domestic freight costs is not warranted. Petitioner argues that respondent has not indicated why or to what extent any inland freight expense should be adjusted to accord with *Sigma*.

Department's Position: We agree with respondent that the Department should adjust freight costs of the inputs in accordance with *Sigma*. In *Sigma*, the court ruled that the Department overvalued freight when it added to the surrogate value for a material input, which was obtained from the import statistics of the surrogate country, an amount for freight from the NME supplier factory to the NME factory. The court reasoned that a manufacturer would minimize its material and freight costs by purchasing imported material if the cost of transportation from the port to the factory were less than the cost of transportation from the domestic supplier to the factory. For the final results, we adjusted the CIF surrogate values by revaluing freight expenses based on the shorter of two distances: the distance from the port of import to the factory or the distance from the actual supplier to the factory. (*See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from the People's Republic of China* (62 FR 51410, 51414, October 1, 1997) (*Roofing Nails*).) In situations where an input is purchased from several suppliers, we adjusted the value for inland freight by comparing the distance from the port of import to the factory to the distance from each supplier to the factory. We then multiplied the shorter of the distances for each supplier by the proportion of the input purchased from each supplier to calculate the weighted average inland freight expense for each input.

Comment 9: HCL Freight Expense.

Respondent asserts that the Department should not add freight costs for transporting HCl from PRC suppliers to respondent's factories to the *Chemical Weekly* price because the *Chemical Weekly* price is an FOB Indian export price. Respondent argues that because the price is an FOB Indian seaport price, it includes both the ex-factory price of HCl and the transportation costs thereof from an Indian factory to an Indian seaport. Respondent maintains that the Department double-counted freight costs for HCl by adding PRC domestic freight costs to the domestic transportation costs included in the surrogate value.

Respondent adds that the Department did not include the domestic freight costs in the respondent's country when the Department used *Chemical Weekly*'s FOB Indian seaport price in past NME cases. Respondent cites the April 22, 1996 Factors Valuation Memorandum for the *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*) and the October 22, 1995 Valuation Memorandum for the *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) (Polyvinyl Alcohol), in which the Department did not add freight to the surrogate value.

Petitioner asserts that the Department should continue to add domestic PRC freight costs to the value for HCL because specific distance and transportation modes for moving the HCL from the supplier to respondent's factory, and for moving the HCL in the surrogate country from supplier to port of export, are not identified on the record. Petitioner argues that respondent reported the HCL transportation distance as short and the mode as truck, while transportation distance and mode are unknown for the Indian HCL surrogate value.

Department's Position

We agree with respondent that freight costs for transporting HCL from the PRC suppliers to the factory should not be added to the surrogate value. When we use, as a surrogate for respondent's materials costs, the cost of the material in a surrogate country, this cost should include the cost of transporting the merchandise to the consumer in the surrogate country. In the preliminary results, we relied on *Chemical Weekly* for a surrogate value for HCL. The HCL prices in *Chemical Weekly* are based upon FOB export prices from the surrogate country, India. FOB export prices by definition include the cost of transporting the merchandise from the Indian supplier to the Indian port. We consider this cost to be equivalent to the cost of transporting the merchandise from the Indian supplier to the Indian consumer. *See* the factor valuation memos for *Bicycles* and *Polyvinyl Alchohol*. Therefore, for these final results we have not added any additional freight to the FOB value.

Petitioner's assertions that the record does not provide specific information from which the Department can calculate freight costs is moot because there is no need to calculate such costs.

Comment 10: Wood Pallets.

Respondent asserts that the Department should value the wood pallet input by using HTS 4403.2000, ''sawlogs and veneerlogs in rough w/n striped of bark or merely rough down,'' instead of HTS 4415.1000, ''cases, boxes, crate, drum and similar packings—cable drums of wood,'' because respondent produces finished pallets itself. Respondent states that because it uses the same wood to produce wood brackets and wood pallets, the Department should value wood for pallets using the same HTS number it used to value wood brackets, HTS 4403.2000. Respondent argues that, during the investigation, the Department verified that respondent produces finished pallets. Respondent contends that because the Department added the value for finished wood pallets, using HTS 4415.1000, and the values for wood, nails, and packing labor in the NV calculation, the Department double-counted the costs of wood, nails, and packing labor.

Respondent also asserts that, even if the Department determines not to use input values under HTS 4403.2000, the Department should use HTS 4415.2000 to minimize double-counting. Respondent argues that MFTI classifies wood pallets under HTS 4415.2000, which states ''pallet box, pallets, and other load boards of wood.'' Respondent maintains that in comparison to the MFTI definition of HTS 4415.1000, ''cases, boxes, crates, drums, and similar packing cable drums of wood,'' it is clear that MFTI includes a wood pallet in HTS 4415.2000.

Petitioner asserts that the Department correctly valued pallets using the surrogate value for the finished pallet. Petitioner states that the Department can

choose to value the finished pallets or construct the value of the pallet from labor, material (including scrap), tools, energy, transportation, and overhead. Petitioner argues that, if all the inputs are not available, the Department must use surrogate values. Petitioner adds that the Department should include the cost of brackets and labor, etc., to account for additional packing expense in addition to using surrogate values for pallets.

Department's Position: We agree with respondent that we should value pallets using HTS 4403.2000, a surrogate value for the wood used to construct the wood pallets, because respondent constructs the pallets, instead of HTS 4415.100, a surrogate value for the finished pallet, as used in the preliminary results. In the preliminary results, because we valued finished pallets, as well as materials used to construct the pallets, such as nails and wood brackets, we overstated the value of pallets. This change in methodology is in accordance with the Department's determination in the *Final Results of Antidumping Administrative Review of Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China* (61 FR 15028, Comment 3, April 4, 1996) (*Hand Tools*). In *Hand Tools,* the Department determined that ''we should value the pallets using the factor and surrogate values for wood, nails, and packing labor, separately, rather than for the complete pallet. The information on the record at the time of the preliminary results indicates that the factories make the pallets from wood and nails rather than purchase the completed pallet.''

We agree with petitioner's assertions that the Department should include the cost of labor, material, tools, energy, transportation, and overhead in constructing the value for the pallet. Respondent separately reported consumption amounts for wood, depending upon its application, and for nails; thus, respondent reported materials used to construct the finished pallet. (*See* Respondent's January 21, 1997 and February 21, 1997 submissions.) We have no basis in the record to conclude that the packing labor amounts required to construct the pallets is not included in the reported input amounts for packing labor, or that the energy amounts required to construct the pallets are not included in the reported amounts for energy. We also consider, in this instant case, that expenses for tools and transportation of pallet materials are included in overhead. Therefore, because the expenses for labor, tools, energy, transportation, and overhead incurred in the construction of wood pallets have been valued as mentioned above, we find that further adjustments are not warranted.

Comment 11: Error in Valuing Wood Pallets and Coal.

In the preliminary results, the Department used data from the February 1995 (April 1994 to February 1995) and August 1996 (April 1995 to August 1996) issues of *MFTI* to value wood pallets and coal inputs. Respondent asserts that the Department should value inputs using data most contemporaneous with the POR when determining the final results. Specifically, respondent requests that the Department use data from the March 1996 (April 1995 to March 1996) issue of *MFTI*, rather than the April 1994 to February 1995 data, to value wood pallets. Respondent argues that the April 1995 to March 1996 data are most contemporaneous with the POR.

Petitioner asserts that the Department should use only the April 1995 to August 1995 data from *MFTI* to value coal and wood pallets. Petitioner argues that these values for a five-month period most closely reflect the values for the POR.

Petitioner also asserts that the Department included the wholesale price index (WPI) for March 1995 when inflating the value, although March 1995 was not included in either data source used in the preliminary results. Petitioner argues that if the Department uses both data sources, the Department should not include the WPI for March 1995 in the inflator calculation.

Department's Position: We agree with both respondent's and petitioner's premise that the Department should use data most contemporaneous with the POR to value inputs for the final results. For the final results, we obtained and used Indian import statistics from *MFTI* for the period September 1995 through June 1996 to value wood for pallets and coal for the final results. Therefore, we have used values for a ten-month period that most closely reflects the POR.

We agree with petitioner's assertion that the Department should not have included the WPI for March 1995 in the calculation of the inflator for coal and wood. However, because we have not used the March 1995 data in the final results, we have not included the March 1995 WPI in the calculation of the inflator.

Comment 12: Labor.

Petitioner asserts that the Department should use a different category for valuing plating labor if the Department bases labor values from the *1995 Yearbook of Labour Statistics* (*YLS*). Petitioner argues that the plating labor should be valued using categories 351, ''manufacture of industrial chemicals,'' and 352, ''manufacture of other chemical products,'' instead of using category 381, ''manufacture of fabricated metal products.''

Petitioner also asserts that the Department should use different values for skilled and unskilled labor. Petitioner argues that the use of one average labor value does not accurately reflect the cost of labor mix used to produce HSLWs. Petitioner references *Sulfanilic Acid from China; Preliminary Results of Antidumping Duty Administrative Review* (62 FR 25917, May 12, 1997) (*Sulfanilic Acid*), where the Department selected surrogate values broken out into skilled labor and unskilled labor from the Economist Intelligence Unit's *Investing, Licensing and Trading Conditions Abroad* (*ILT*).

Petitioner further asserts that the Department should reject labor values used in the preliminary results because these values do not include fringe benefits and bonuses. Petitioner suggests that the Department use *ILT* because it was used in other cases covering the same POR and does include those benefits.

Respondent states that the Department correctly selected category 381 in the *YLS* as the labor category equivalent to ZWG's plating labor. Respondent argues that categories 351 and 352, suggested by petitioner, only include labor information related to the manufacture of industrial chemicals and other chemical products. Respondent states that its plating factory did not manufacture any chemicals or chemical products. Rather, respondent argues, the plating factory consumes chemicals and chemical products in plating HSLWs, which are metal products. Respondent contends that the plating factory is engaged in the manufacture of metal products, which is classified as category 381 in *YLS*.

Respondent agrees with the Department's use of one labor value. Respondent asserts that petitioner did not provide any information showing separate values for skilled and unskilled labor and that no such data are available to the Department.

Respondent agrees with the Department's use of *YLS* to value labor inputs. Respondent argues that the Department should not use *ILT* because the Department has consistently rejected it as a source for surrogate labor values because the data are not based on actual data.

Finally, respondent requests that the Department value labor for the final results using updated labor rates.

Department's Position: We disagree with petitioner's suggestion that the Department should use categories 351 and 352 for valuing plating labor. The labor used in plating HSLWs represents labor used in the manufacture of fabricated metal products. Though the labor used in plating utilizes chemicals, it is not used to manufacture chemicals. We have continued to value all labor using category 381.

We disagree with petitioner's assertion that the Department should use *ILT* to value labor because it provides different values for skilled and unskilled labor and includes fringe benefits and bonuses. The Department has routinely used *YLS* to value labor because the *ILT* reports labor rate estimates based on rates stipulated in various Indian laws and not based upon actual wage rates.

Additionally, we disagree with petitioner's assertion that the *YLS* data used in the preliminary results does not include fringe benefits and bonuses. The Department considers the ILO statistics, such as the *YLS* data, to be fully loaded with respect to all labor expenses. (*See Polyvinyl Alcohol,* 61 FR at 14061.) Accordingly, because the use of *YLS* is consistent with the Department's established practice, the *YLS* has been determined to include all expenses associated with labor, and the *ILT* data have been determined to be an inappropriate source for wage rates, we have continued to use *YLS* for the final results. (*See Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Administrative Review,* 61 FR 66255, 66259, December 17, 1996, *Chrome-Plated Lug Nuts from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 61 FR 58519, 58522, November 15, 1996.)

Comment 13: Water.

Respondent requested that the Department calculate ZWG's production cost without valuing water. Respondent asserts that the Department double-counted the water input by valuing water in addition to valuing factory overhead for ZWG. Respondent contends that the reported water input for ZWG represents water used at the HSLW production factory, not at the plating factory. Respondent claims that because the HSLW factory's water was supplied by a public utility during the POR, was not physically incorporated into the HSLWs, and was not a major indirect material input which could be separately valued, ZWG's water consumption meets the criteria established in *Saccharin* for inclusion in factory overhead. Respondent argues that the Department has established the practice of including the value of water inputs in the value of factory overhead where water is supplied by a public utility or by a nearby body of water and refers to *Saccharin, Sebacic Acid, Sulfanilic Acid from the People's Republic of China* (61 FR 53711, October 15, 1996), *Polyvinyl Alcohol, Disposable Lighters from the People's Republic of China* (60 FR 22359, May 5, 1995), *Silicon Carbide from the PRC* (59 FR 22585, May 2, 1994), and *Coumarin.* Respondent adds that in *Sebacic Acid,* the Department stated that it presumes factory overhead values obtained from the *Reserve Bank of India Bulletin,* the factory overhead source used in the instant review, to include values for water.

Petitioner asserts that the Department correctly valued water in the preliminary determination. Petitioner states that respondent correctly cited *Saccharin* where the Department considered water an overhead item. Petitioner argues that respondent failed to mention that the Department also stated in *Saccharin* that water required for a particular segment of the production process may ''be more typical of items that are accounted for as direct material inputs, rather than as overhead item, and as such, valued separately.'' Petitioner asserts that the Department should value water as a separate input factor in plating because water is directly incorporated into the final product.

Department's Position: We disagree with respondent and have continued to include the water inputs as material inputs in the calculations of production cost of ZWG's factory. Following the Department's criteria in *Saccharin,* we value water if it is required for a particular segment of the production process. (*See Saccharin,* 59 FR 58818, Comment 7, November 15, 1994.) Based upon respondent's description of the production process, we consider respondent's use of water in the acid treatment as required for that particular segment, because the steel wire rod must be rinsed with water after an acid bath. (*See* Exhibit 5 of respondent's January 21, 1997 submission.) Because the water for ZWG's HSLW production factory is a required input for a particular segment of the HSLW production process, the Department's practice is to value it separately like other direct material inputs required in the production process. Moreover, in determining whether an input should be valued separately or considered valued in overhead, the Department stated in *Bicycles* that, the input in question should be valued separately if it is ''* * * essential for producing the finished product * * *.'' and if this input appears ''* * * to be [a] significant input[s] into the manufacturing process rather than miscellaneous or occasionally used materials, i.e., cleaning supplies which might normally be included in consumables.'' Based upon respondent's submission, water is a significant input into the manufacturing process. (*See* Exhibit 9 of the proprietary versions of respondent's January 21, 1997 submission and Final Analysis Memo.)

Unlike the instant case, in *Sulfanilic Acid,* the Department included the water value in the factory overhead value because respondents pumped water from their own wells for use in the production process and recirculated the water. (*See Sulfanilic Acid,* 61 FR at 53716.) However, in *Saccharin,* the Department valued water purchased by respondent separately, because it was considered to be a direct input in the production of the finished product. (*See Saccharin,* Comment 7.) Also, in *Porcelain-on-Steel Cooking Ware From the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 62 FR 32757, 32759, 32762, June 17, 1997, the Department considered water consumed in the production process as a direct material input and valued it as such. Although respondent's HSLW factory purchased water from a public utility, that alone is not dispositive as to how it should be valued. Here, as in *Saccharin* and *Porcelain-on-Steel,* the water was also a required input in a particular segment of the production process. Therefore, we have valued it as a separate input.

Disposable Pocket Lighters and the other cases on which respondent relies, do not indicate whether respondent purchased the water, consumed the water as a direct input, or required the water for producing the finished product. Moreover, with regard to considering the *Reserve Bank of India Bulletin* (*RBIB*) factory overhead values as inclusive of water values, the Department stated in *Disposable Pocket Lighters* that, ''the *RBIB* data did not indicate to the contrary.'' (*See Disposable Pocket Lighters,* 60 FR at 22367.)

In the instant case, as we have explained, water purchased from the public utility is not an incidental input into the production process. Rather, it is a direct input required for a particular segment of the production process. Additionally, there is no basis for

determining whether water is included in the factory overhead value in the *RBIB*, and thus no basis for an adjustment. Therefore, in the final results, we are continuing to value water for ZWG's factory in accordance with the Department's practice in the previous segments of this case, as well as its position in previous cases.

Comment 14: Aberrational Factor Values.

Respondent asserts that the Department should not use data from the June 1996 *MFTI* to value trisodium phosphate (HTS 2835.23.00), cases, boxes, crates, and drums (HTS 4415.10.00), and pallets and load boards (HTS 4415.20.00), because respondent claims that the data are aberrational.

Department's Position: We agree with respondent's assertion that the value in the June 1996 *MFTI* for trisodium phosphate, HTS 2835.23.00, is aberrational, apparently due to the extraordinarily low quantity reported. Because we could not obtain more contemporaneous data to value trisodium phosphate, we have continued to use the March 1996 issue of *MFTI*, covering the period April 1995 through March 1996.

Respondent's comments regarding the issue of the valuation of pallets using data in the June 1996 *MFTI* for cases, boxes, crates, and drums (HTS 4415.10.00), and pallets and load boards (HTS 4415.20.00), are moot because we did not value pallets using HTS 4415.10.00 or HTS 4415.20.00 in the final results. (*See* Comment 10.)

Additional Changes for the Final Results

For the final results of this review, we have updated most surrogate values based on *MFTI*. Additionally, we have updated the labor surrogate value using the *1996 YLS*. (*See* Final Analysis Memo.)

Final Results of the Review

As a result of the comments received, we have changed the results from those presented in the preliminary results of the review:

Manufacturer/exporter	Time period	Margin (percent)
Zhejiang Wanxin Group Co., Ltd	10/01/95–09/30/96	14.15

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries.

Individual differences between Untied States price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs service.

Furthermore, the following deposit rates will be effective upon publication of these final results for all shipments of HSLWs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for ZWG, which has a separate rate, and all ZWG exports through market-economy trading companies, the cash deposit rate will be the company-specific rate established in these final results of review; (2) for all other PRC exporters, the cash deposit rate will be 128.63 percent, the PRC rate established in the less-than-fair-value investigation of this case; and (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34.(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This 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: November 10, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30397 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet and Strip From the Republic of Korea, Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

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

ACTION: Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) has received information sufficient to warrant initiation of a changed circumstances administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from Korea (56 FR 25669 (June 5, 1991)). On July 5, 1996, Cheil Synthetics, Inc. (Cheil) was revoked from the order based on three consecutive years of no dumping. (*See Polyethtylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part*, 61 FR 35177 (July 5, 1996).) Based on information provided in its September 29, 1997 letter, we preliminarily determine that Saehan Industries, Inc. (Saehan) is the successor firm to Cheil, and therefore, the Department's revocation of Cheil applies to Saehan.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney at (202) 482–4475 or Linda Ludwig at (202) 482–3833, AD/CVD Enforcement Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay

Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR 351 (62 FR 27296).

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1997, Saehan requested that the Department conduct a changed circumstances administrative review pursuant to section 751(b) of the Tariff Act to determine whether Saehan should properly be considered the successor firm to Cheil and if, as such, the revocation issued for Cheil should apply to Saehan. Saehan also requested the Department to publish the preliminary results concurrently with this notice of initiation, pursuant to 19 CFR 351.221(c)(3)(ii). In its request, Saehan notified the Department that on February 28, 1997, Cheil officially changed its corporate name to Saehan, and despite this change in corporate name, the management, production facilities, supplier relationships, and customer base of Saehan are virtually identical to those of the former Cheil. In support of its claim, Saehan submitted documentary evidence demonstrating that Saehan maintained essentially the same management, production facilities, supplier, and customer relationships as Cheil. Citing the Department's determinations in *Sugars and Syrups from Canada; Initiation and Preliminary Results of Changed Circumstances Review*, 61 FR 48885 (Sept. 17, 1996) and *Industrial Phosphoric Acid from Israel; Preliminary Results of Antidumping Duty Changed Circumstances Review*, 58 FR 59010 (Nov. 5, 1993), Saehan claimed that the Department should determine that it is the successor-in-interest to Cheil.

Scope of the Review

The merchandise subject to this antidumping duty order are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate, film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films, and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule of the United States subheading 3920.62.00.00. The HTS subheading is provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

This changed circumstances administrative review covers Saehan.

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

In accordance with section 751(b) of the Tariff Act, as amended (the Act), the Department is initiating a changed circumstances administrative review to determine whether Saehan is the successor company to Cheil. In making such a determination, the Department examines several factors including, but not limited to, changes in (1) management, (2) production facilities, (3) supplier relationships, and (4) customer base, *See e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is similar to that of the predecessor. *See e.g., Industrial Phosphoric Acid from Israel, Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994). Thus, if evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same entity as the former company, the Department will treat the successor company the same as the predecessor for purposes of antidumping liability, e.g., assign the same cash deposit rate, revocation, etc.

We have examined the information provided by Saehan in its September 29, 1997 letter and determined that Saehan has established a *prima facie* case that it is the successor-in-interest to Cheil. The management and organizational structure of the former Cheil has remained intact under Saehan, and there have been no changes in the production facilities, supplier relationships, or customer base. Therefore, we preliminarily determine that Saehan has maintained the same management, production facilities, supplier relationships, and customer bases as did Cheil.

Based upon the foregoing, we preliminarily determine that the July 5, 1996 revocation issued for Cheil applies to Saehan. Because Saehan has presented evidence to establish a *prima facie* case of its successorship status, we find it appropriate to issue the preliminary results in combination with the notice of initiation in accordance with 19 CFR 351.221(c)(3)(ii).

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will publish the final results of this changed circumstances review, which will include the results of its analysis raised in any such written comments.

This initiation of review and notice are in accordance with sections 751(b) of the Act, as amended (19 U.S.C. 1675(b)), and 19 CFR 351.216.

Dated: November 12, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30388 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Certain Welded Carbon Steel Pipes and Tubes From Thailand

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

EFFECTIVE DATE: November 19, 1997.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review for the antidumping order on certain welded carbon steel pipes and tubes from Thailand, pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, ''the Act'').

FOR FURTHER INFORMATION CONTACT: John Totaro or Dorothy Woster, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–1398 or 482–3362, respectively.

SUPPLEMENTARY INFORMATION: Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant case, the Department has determined that it is not

practicable to complete the review within the statutory time limit (see *Memorandum to Robert S. LaRussa from Joseph A. Spetrini,* November 12, 1997).

Since it is not practicable to complete this review within the time limits mandated by the Act (245 days from the last day of the anniversary month for preliminary results, 120 additional days for final results), in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit as follows:

Product	Country	Review period	Initiation date	Prelim due date	Final due date*
Certain Welded Carbon Steel Pipes and Tubes (A–549–502).	Thailand	03/01/96–02/28/97	04/24/97	03/31/98	08/05/98

*The Department shall issue the final determination 120 days after the publication of the preliminary determination. This final due date is estimated based on publication of the preliminary notice five business days after signature.

Dated: November 12, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 97–30398 Filed 11–18–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–337–802]

Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Fresh Atlantic Salmon From Chile

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

EFFECTIVE DATE: November 19, 1997.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong, Marian Wells or Todd Hansen, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1278, 482–6309 or 482–1276, respectively.

Preliminary Determination

The Department of Commerce (the ''Department'') preliminarily determines that countervailable subsidies are not being provided to producers or exporters of fresh Atlantic salmon (''salmon'') in Chile.

Petitioners

The petition in this investigation was filed by the Coalition for Fair Atlantic Salmon Trade (''FAST'') and the following individual members of FAST: Atlantic Salmon of Maine; Cooke Aquaculture U.S., Inc.; DE Salmon, Inc.; Global Aqua—USA, llc; Island Aquaculture Corp.; Maine Coast Nordic, Inc.; ScanAm Fish Farms; and Treats Island Fisheries (collectively referred to hereinafter as ''petitioners'').

Case History

Since the publication of the notice of initiation in the **Federal Register** (62 FR 36772 (July 9, 1997) (''*Initiation Notice*''), the following events have occurred.

We deemed this case to be extraordinarily complicated and on July 28, 1997, we postponed the preliminary determination until November 10, 1997 (62 FR 40335).

On July 23, 1997, we issued a countervailing duty questionnaire to the Government of Chile (''GOC''). Due to the large number of producers and exporters of fresh Atlantic salmon in Chile, and with the GOC's assurance that it could provide aggregate data for most programs, we solicited information from the GOC on an aggregate or industry-wide basis, rather than from the individual producers and exporters. On August 1, 1997, the GOC notified us that it lacked usage information for the following programs: Chilean Production Development Corporation (''CORFO'') Export Credits and Long-Term Export Financing, Law 18,439 Export Credit Limits, Law 18,449 (Stamp Tax Exemption), and Article 59 of Decree Law 824. Therefore, on August 7, 1997, we issued an additional questionnaire to four producers/exporters of the subject merchandise concerning the above four programs as well as Chapter XVIII and Chapter XIX. The questionnaire was sent to the following companies: Pesquera Mares Australes Ltda., Marine Harvest Chile, Aguas Claras S.A., and Pesquera Eicosal Ltda.

On August 1, 1997, petitioners submitted comments arguing that the Law No. 18,480 program should have been included in the initiation. In the *Initiation Notice,* the Department declined to initiate on Law No. 18,480, partly based on information provided during consultations with the GOC. Upon further review of information on the record, we determined that our initial rejection of petitioners' allegation was unwarranted. On August 21, 1997, we decided to include certain benefits allegedly provided under Law No. 18,480 in our investigation (see Memorandum from team to Richard W. Moreland, Acting Deputy Assistant Secretary for Import Administration). On August 25, 1997, the Department requested that the GOC provide information regarding rebates for exports using domestically produced inputs provided under Law No. 18,480.

The Department received the GOC and company questionnaire responses on September 15, 1997 and September 22, 1997. The Department issued supplemental questionnaires to the GOC and the four companies, and their affiliates, on September 30, 1997, and received the supplemental responses on October 14, 1997. On October 21, 1997, the Department issued a second supplemental questionnaire to the GOC. The GOC responded to this questionnaire on October 27 and October 29, 1997.

On November 6, 1997, we received a request from petitioners, pursuant to 19 CFR 355.20(c), to postpone the final determination in this investigation to coincide with the final determination in the antidumping duty investigation of the fresh Atlantic salmon from Chile. Accordingly, we are aligning the final determination in this investigation with the date of the final determination in the antidumping duty investigation of the fresh Atlantic salmon from Chile.

Scope of Investigation

The scope of this investigation covers fresh, farmed Atlantic salmon, whether imported ''dressed'' or cut. Atlantic salmon is the species *Salmo salar,* in the genus *Salmo* of the family *salmoninae.* ''Dressed'' Atlantic salmon refers to salmon that has been bled, gutted, and cleaned. Dressed Atlantic salmon may be imported with the head on or off; with the tail on or off; and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the investigation. Examples of cuts include, but are not limited to: crosswise cuts

(steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the ''pin bones'' in or out.

Excluded from the scope are: (1) fresh Atlantic salmon that is ''not farmed'' (*i.e.,* wild Atlantic salmon); (2) live Atlantic salmon; and (3) Atlantic salmon that has been subjected to further processing, such as frozen, canned, dried, and smoked Atlantic salmon, or processed into forms such as sausages, hot dogs, and burgers.

The merchandise subject to this investigation is classifiable at statistical reporting numbers 0302.12.0003 and 0304.10.4091 of the Harmonized Tariff Schedule (HTS) of the United States. Although the HTS numbers are provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

Comment on Scope

As discussed in the *Initiation Notice* at 36773, we invited comments on the scope of this proceeding. On August 8, 1997, we received a comment from the National Restaurant Association, an interested party, regarding product coverage. Specifically, the National Restaurant Association argued that ''dressed'' whole Atlantic salmon and ''cut'' salmon are not ''like products.'' Most of the National Restaurant Association's arguments have already been addressed in the *Initiation Notice,* where the Department adopted the single domestic like product definition set forth in the petition. In addition, the fact that ''dressed'' salmon and ''cut'' salmon are classified under separate HTS categories is irrelevant. Like products can and often do comprise several HTS categories or a subset of merchandise covered by a single HTS number. Finally, the specific exclusion of ''cut'' salmon from the scope of the *Salmon from Norway* proceeding was a result of the fact that the petition in that case did not include cut salmon, whereas, due to changing market conditions, the petition in this case specifically did. *See, e.g., Antidumping Duty Order: Fresh and Chilled Atlantic Salmon from Norway,* 56 Fed. Reg. 14920 (1991).

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the ''Act'').

Injury Test

Because Chile is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Chile materially injure, or threaten material injury to, a U.S. industry. On August 6, 1997, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Chile of the subject merchandise (62 FR 42262).

Period of Investigation (''POI'')

The period for which we are measuring subsidies is calendar year 1996.

Subsidies Valuation Information

Benchmarks for Loans and Discount Rates

To calculate the countervailable benefit from loans and nonrecurring grants, we have used the average rates for U.S. dollar lending in Chile, as calculated by the Superintendencia de Bancos e Instituciones Financieras (''SBIF''), the Chilean bank supervisory agency. The U.S. dollar interest rates were used because the loans in question were denominated in U.S. dollars and the grant that was allocated over time was made in U.S. dollars.

Allocation Period

Based on information provided by the GOC, we have used nine years, the weighted-average useful life of productive assets for the Chilean salmon industry, as the allocation period in this investigation.

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. ProChile Export Promotion Assistance

ProChile, the Export Promotion Bureau of the Chilean Ministry of Foreign Affairs, aims to promote and diversify Chile's exports by providing grants to private companies or industries for export promotional activities. Each ProChile project is designed and developed through a joint participation of ProChile and the private sector. The projects are aimed at the ''internationalization'' of the private sector participant. ''Internationalization'' refers to the extension of a company's commercial operations to the external markets, which can be achieved through exportation, mixed-ownership (foreign and domestic), joint ventures, and international subsidiaries. Typical ProChile projects include advertising and promotional campaigns, creation of catalogs and brochures, and organization of trade fairs. These projects are co-financed by ProChile and the private sector participants.

The producers and exporters of salmon in Chile received funding under this program for several salmon-related projects targeted to the U.S. and other export markets.

In the past, the Department has recognized that general export promotion programs which provide only general informational services, do not constitute a countervailable benefit. *See, e.g., Fresh Cut Flowers from Mexico,* 49 FR 15007 (1984). However, where such activities promoted a specific product, or provided financial assistance to a firm, we have found the programs to be countervailable. *See, e.g., Fresh Atlantic Groundfish from Canada,* 51 FR 10041 (1986) (government funding of attendance at trade fair which targeted the exports of specific product to the U.S. market found to be countervailable); and *Fresh Cut Flowers from Israel,* 52 FR 3316 (1987) (government reimbursements of up to 50 percent of actual expenses incurred by the firm for promotional activities found to be countervailable). Based on the information on the record, we find that ProChile's projects went beyond what we normally consider to be *general* export promotional activities. The projects were aimed at the promotion of specific products to targeted export markets and also provided direct financial assistance to the participating firms.

Accordingly, we preliminarily determine that the ProChile grants provide countervailable subsidies within the meaning of section 771(5) of the Act. The grants are a direct transfer of funds from the GOC providing a benefit in the amount of the grant. The grants are also specific within the meaning of section 771(5A)(B) of the Act because their receipt is tied to the anticipated exportation of the subject merchandise to the United States and other export markets.

We are treating these grants as ''non-recurring'' based on the analysis set forth in the Allocation section of the *General Issues Appendix* because they are exceptional rather than ongoing

events. Each project funded by a grant requires a separate application and approval, and the projects represent one-time events.

To calculate the countervailable subsidy, we used our standard grant methodology. In accordance with our past practice, we allocated over time grants from those years in which the benefits from this program exceeded 0.5 percent of the value of appropriate exports in the year of receipt. We divided the benefit attributable to the POI by the value of appropriate exports in the POI. On this basis, we determine the countervailable subsidy rate for this program to be 0.05 percent *ad valorem*. For a discussion of the denominators used in the calculation of the subsidy rate for this program, *see* November 10, 1997 Calculation Memorandum to file from team.

B. CORFO Export Credit Insurance Premium Assistance

In 1995, CORFO established a program entitled ''Export Credit Insurance Premium Assistance For Small and Medium-Sized Companies.'' This program provides a grant of up to 50 percent of the value of the export credit insurance premium, subject to a cap of one percent of the particular export invoice, for export insurance purchased by small and medium-sized Chilean exporting companies from private insurance companies. Only those Chilean exporters with annual sales of up to US $10,000,000 are eligible for this program. CORFO's liability to the insurers is limited to the payment of a portion of the insurance premium for the eligible company. Once the exporter is approved, the agreed portion of the insurance premium is paid directly to the insurance company by CORFO. CORFO made payments to insurance companies on behalf of eligible salmon-exporters under this program.

We preliminarily determine that CORFO's payments of the insurance premiums constitute countervailable grants within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOC that confer a benefit in the amount of the grant. These grants are specific within the meaning of section 771(5A)(B) of the Act because their receipt is contingent upon export performance. Because these grants are made on an ongoing basis, we have treated the benefits as recurring in accordance with the analysis set forth in the *General Issues Appendix*.

To calculate the subsidy rate, we divided the benefit attributable to the POI by the value of all exports of fresh Atlantic salmon by producers and exporters of salmon during the POI. On this basis, we determine the countervailable subsidy for this program to be 0.01 percent *ad valorem*.

C. Law No. 18,634 (Deferred and Waived Import Duties on Capital Goods)

Law Number 18,634 of August 5, 1987, established a program whereby customs duties may be deferred and subsequently waived on imported capital goods used in the production of exports. Under this program, both exporters and non-exporters are allowed to defer paying duties on certain capital goods. During the deferral period, the amount of duties owed is treated as a loan on which the producer is required to pay interest. If the capital goods are ultimately used for the production of exported goods, the outstanding balance and interest on the loan are waived.

The Law 18,634 deferral program is available to exporters as well as non-exporters. The usage data provided by the GOC indicates that the fishing and aquaculture sector is neither a predominant nor disproportionate user of the program. Moreover, many sectors not normally considered to be exporters, such as the construction, electric, gas and water industries, participated in the duty deferral program. Accordingly, we preliminarily determine that the benefit, if any, under the deferral program is not specific within the meaning of section 771(5A) of the Act.

Under the Law 18,634 waiver program, the waiver of duties is allowed, in whole or in part, if imported capital goods are used in the production of merchandise that is later exported. We preliminarily determine that the waiver program provides countervailable subsidies within the meaning of section 771(5) of the Act. The waiver of import duties represents revenue foregone by the GOC, providing a benefit in the amount of the waiver. Because the waiver program is contingent on export performance, we preliminarily determine that it is specific within the meaning of section 771(5A)(B) of the Act.

The GOC has provided the amounts of customs duties waived during the POI for exporters of subject merchandise. Because these waivers are automatic when exportation is demonstrated, we determine that the benefits under this program are recurring. To calculate the countervailable subsidy from this program, we divided the total amount of waivers granted during the POI by the value of all exports of producers and exporters of salmon. On this basis, we determine the countervailable subsidy from this program to be 0.23 percent.

D. Import Substitution of Capital Goods

In addition to the duty deferral and waiver program discussed above, Law 18,634 also contains a provision related to the purchase of domestically sourced capital goods. According to the GOC, this program is intended to encourage capital investment in Chile and to avoid a preference for imported capital goods resulting from the import duty deferral and waiver provisions of the same law. Under this provision, companies purchasing capital equipment domestically can borrow up to 73 percent of the amount of customs duties that would have been paid on the capital goods if they had been imported. If the capital goods are ultimately used in the production of exports, the loan balances and any unpaid interest are waived and the producer is not required to repay the loan. The GOC has provided the amounts of loans and waivers received under this program by exporters of subject merchandise for the POI.

Because the receipt of loans under this program is contingent upon the purchase of domestically produced capital equipment, we determine that these loans are specific in accordance with section 771(5A)(C) of the Act. Based on a comparison of the benchmark interest rates (*see Subsidies Valuation* section of this notice) to the rates charged on the loans, we preliminarily determine that certain loans confer benefits within the meaning of section 771(5)(E)(ii) of the Act because the rate charged is less than the benchmark rate. We calculated the benefit from these loans by subtracting the interest charged during the POI under the program from interest under the benchmark rate and dividing this difference by the value of all sales of producers and exporters of salmon. On this basis, we determine the countervailable subsidy from this program to be 0.02 percent *ad valorem*.

Regarding the waivers provided under the program, we preliminarily determine that the waivers are countervailable subsidies within the meaning of section 771(5) of the Act. The waiver of the loan balances represents a direct transfer of funds from the GOC, providing a benefit in the amount of the balance and any unpaid interest waived. Further, the waivers are specific within the meaning of section 771(5A)(B) of the Act because their receipt is contingent upon export performance.

Because these waivers are automatic when exportation occurs, we determine that the benefit from this program is recurring. To calculate the

countervailable subsidy from the waiver portion of this program, we divided the total amount of waivers granted during the POI by the value of all exports of producers and exporters of salmon from Chile. On this basis, we determine the countervailable subsidy from this program to be 0.25 percent *ad valorem*.

E. Promotion and Development Fund

The Promotion and Development Fund for Extreme Regions was established pursuant to Decree Law No. 3,529, published on December 6, 1980. Article 38 of this law established the fund to aid in the development of remote regions of Chile. These regions are Tarapaca, Aysen del Presidente Carlos Ibanez del Campo, Magallanes and Antartica Chilena and the provinces of Chiloe and Pelena. The fund was established to assist small and medium-sized investors who make investments or reinvestments in these regions. Decree 15 of Decree Law 3,529 (published April 20, 1981) established the regulations pertaining to the fund. These investments must be directly linked to the production process and involve capital assets relating to the company's regular business activities. The program provides grants in the amount of 15 percent of the cost of new investments or reinvestments made between January 1 and December 31, 1981, and 20 percent of the cost of investments and reinvestments made between January 1, 1982 and December 31, 1999. The GOC has provided information on the amount of grants received under this program by the producers and exporters of the fresh Atlantic salmon.

We preliminarily determine that Promotion and Development Fund grants provide countervailable subsidies within the meaning of section 771(5) of the Act. The grants are a direct transfer of funds from the GOC providing a benefit in the amount of the grant. The grants are specific within the meaning of section 771(5A)(D)(iv) because they are limited to firms located in a designated geographical region.

We have treated these grants as non-recurring based on the analysis set forth in the Allocation section of the *General Issues Appendix*. In accordance with our practice, we allocated over time, the grants from those years in which the benefits from this program exceeded 0.5 percent of the value of all sales of producer and exporters of salmon in the year of receipt. To calculate the countervailable subsidy, we used our standard grant methodology. We divided the benefit attributable to the POI by the value of all sales of producers and exporters of salmon during the POI. On this basis, we determine the countervailable subsidy for this program to be 0.01 percent *ad valorem*.

F. Law No. 18,480

Law 18,480 of December 19, 1985, established a simplified duty drawback system for inputs used in small volume exports. In addition to the duty drawback provision for imported inputs, the law also contains a provision whereby exporters using domestically produced inputs in their export operations are entitled to the amount of the duty drawback that the exporter would otherwise have realized if they had imported the inputs. Because fresh Atlantic salmon is excluded from the duty drawback portion of the program, our investigation of Law No. 18,480 is limited to the payments for using domestically sourced inputs in the production of exported goods.

The maximum export values for which the rates are applicable and the list of eligible inputs are updated each year. For an input to be eligible as a domestic input, the CIF value of its imported raw materials and inputs may not exceed 50 percent of its net value.

We preliminarily determine that Law 18,480 is a countervailable subsidy within the meaning of section 771(5) of the Act. It is specific within the meaning of section 771(5A)(B) of the Act because the receipt of the payment is contingent upon export performance. The program provides a financial contribution because it is a direct transfer of funds from the GOC to the exporters and producers of salmon.

Because the payment is automatic for eligible products, we have treated these grants as recurring. To calculate the countervailable subsidy from this program, we divided the total amount of grants received during the POI by the value of all exports of producers and exporters of salmon during the POI. On this basis, we determine the countervailable subsidy from this program to be 0.05 percent ad valorem.

II. Programs Preliminarily Determined Not to Be Countervailable

A. Fundación Chile Assistance

Fundación Chile (''FCH'') is a private, non-profit organization established in 1976 through an agreement between the GOC and the International Telephone and Telegraph Corporation (''ITT'') with an original endowment fund of US $50 million. This agreement (Decree No. 1528) stemmed from an earlier agreement (Decree No. 801) in which the GOC agreed to compensate ITT for the value of certain ITT property that a former Chilean government had previously expropriated from ITT. Under the terms of the agreement, ITT agreed to contribute its $25 million compensation to FCH's endowment, and the GOC matched this amount.

FCH's mission is to carry out scientific and technological research and apply the research to industrial production and service areas of Chile. To meet these objectives, FCH forms companies to pursue technologies of interest, which are later sold to private investors, and also provides technical assistance, consulting services, and training to companies for a fee. In 1996, a major portion of FCH's operating budget came from fees for services and profit from the sale of its companies with the remaining amount from the original endowment.

Under section 771(5)(B) of the Act, a countervailable subsidy exists where the government provides a financial contribution or ''makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments.''

The GOC has argued that FCH should not be viewed as the government, nor was FCH entrusted or directed by the GOC to take actions that would normally be vested in the government. We have not addressed these claims because, as explained below, we have preliminarily determined that the financial contributions provided by FCH do not confer a benefit.

With respect to the company start-up ventures, FCH created or co-invested in three salmon-related companies. The first venture was Salmones Antartica (''Antartica''), created in 1982, which became the first company to successfully demonstrate the technical and economic viability of salmon farming in Chile. FCH made three separate equity infusions in Antartica, the last of which was disbursed in 1988. Antartica was sold to private investors in 1989. Although Antartica produced the subject merchandise during the POI, it did not do so during the time FCH had ownership interest. The second venture was in 1988 when FCH, together with three other private companies, formed Salmones Huillinco (25 percent equity participation by FCH) which produces and commercializes smolts. Finally, Salmotec S.A. (Salmotec) was created by FCH and Antartica in 1988. Salmotec was sold to a private company in 1995. FCH made equity infusions in Salmotec in 1988 and 1990.

Section 771(5)(E)(i) of the Act provides that in the case of an equity infusion, a benefit is conferred if the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the county in which the equity infusion is made.

In making this determination, the Department examines the following factors, among others:

1. Current and past indicators of a firm's financial condition;
2. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals;
3. Rates of return on equity in the three years prior to the equity infusion;
4. Equity investment in the firm by private investors; and
5. Prospects in world markets for the product under consideration.

In start up situations and major expansion programs, where past experience is of little use in assessing future performance, we recognize that the factors considered and the relative weight placed on such factors may differ from the analysis of an established enterprise. (For a more detailed discussion of the Department's equityworthiness criteria see the *General Issues Appendix* at 37244.)

With respect to FCH's investments in Antartica, the decision to invest was made in 1981. FCH provided the Department with three separate feasibility studies that it considered at that time. The factors evaluated in the studies included the environmental conditions of Chile, world market conditions, and projected costs and profits. One of the studies in particular projected an internal rate of return, in U.S. dollar terms, of over 30 percent on investment. Based on these factors, the studies conclude that the conditions in Chile were such that salmon farming would be profitable. In light of the studies, we preliminarily determine that FCH's 1982 decision to invest in Antartica was consistent with the usual investment practice of private investors in Chile.

The decision to invest in Salmotec was approved by FCH in 1988. The GOC claims that at the time, the Chilean salmon industry was well-established and profitable. The GOC points to the fact that by 1988, there were 20 producers and/or exporters of salmon in operation in Chile and more private companies were investing in the salmon industry. Moreover, the Chilean salmon industry had been growing at an extraordinary rate, as evidenced by the dramatic increase in volume and value of salmon production. The growth was projected to continue at an even greater rate (see Concurrence Memorandum to Richard W. Moreland, Deputy Assistant Secretary, Import Administration from team dated November 10, 1997). Based on the growth projections and the health of the Chilean salmon industry in 1988 and the entry into that industry by private investors in the same year, we preliminarily determine that FCH's decision to invest in Salmotec was consistent with the usual investment practice of private investors in Chile.

We have not analyzed nor investigated FCH's investment in Salmones Huillinco because this company is not a producer or exporter of the subject merchandise.

The GOC reported that FCH did not provide any aquaculture infrastructure to the salmon industry during the AUL period, and there can be no residual benefits from the provision of infrastructure prior to the AUL period. Therefore, we did not examine this program further.

Finally, regarding the technical assistance provided by FCH, this assistance included research and development, consultations, seminars and inspection services. For each type of service provided, FCH charged a fee. Pursuant to section 771(5)(E)(iv) of the Act, a countervailable benefit exists in this situation if the services are provided for less than adequate remuneration. The adequacy of remuneration is determined in relation to prevailing market conditions for the service.

We have examined the fees charged by private companies which are FCH's major competitors and have found that the fees charged by FCH are in line with those charged by the private service providers. Accordingly, we preliminarily determine that FCH's fees provided adequate remuneration for the services it provided.

For the foregoing reasons, we preliminarily determine that the Chilean salmon industry has not received a benefit from financial contributions provided by FCH.

B. Fund for Technological and Productive Development (FONTEC)

FONTEC was established in 1991 by CORFO to promote, guide, finance, and assist the execution of technological research and development projects in Chile. FONTEC is a committee composed of eight members from the public and private sectors with significant experience and reputation in technological fields. This program provides grants and loans for research and development projects that are aimed at innovations in technology and for investment projects in technological infrastructure.

The amount of FONTEC financing was subject to a ceiling dependent on the line of financing: (1) the first line was for ''technology innovation'' projects involving financing requests lower than US $100,000; (2) the second line was for projects involving financing requests larger than US $100,000; and (3) the third line was for technological infrastructure projects. Any private company or entity in the production sector is eligible for FONTEC funding, provided that the company demonstrates that it has the proper technical, administrative and financial capacity to execute and implement the proposed project and that the project is aimed at technological innovation in products or processes. In addition, the third line of financing is only available to entities which: (1) are formed by at least five companies; (2) organized as a corporation or a foundation whose main line of business is technological transfer; and (3) can show stable projections of the project over time. Applicants, regardless of the line of financing under which they are applying, must demonstrate the eligibility of the project and the applicant company as well as the economic benefits of the project. In particular, the evaluation guidelines for the second line of financing (projects over US $100,000) specifies that the economic benefit criterion may be satisfied by factors such as ''cost savings, production increases, *export increases*, etc.'' (Emphasis added). The guidelines for the other two lines of financing do not enumerate specific factors to measure the economic benefit. Chilean salmon producers received grants under all three lines of financing of this program.

We analyzed whether the program is specific ''in law or fact'' within the meaning of section 771(5A) of the Act. We preliminarily determine that the program is not *de jure* specific because the receipt of the benefits, in law, is not contingent on export performance or on use of domestically goods over imported goods nor are the benefits limited to an enterprise, industry or region. As stated above, we note that anticipated exportation could have been a factor in the approval process of projects under the second line of financing. Nevertheless, we have no evidence that the GOC approved the salmon project under the second line of financing based on the export factor. In other words, although the applicant may have fulfilled the economic benefits criterion by demonstrating anticipated increases

in exports, it is also possible that the criterion was met by other factors such as savings in cost and production increases. At verification, we will closely examine the actual application and approval documents of the project under the second line of financing to determine whether the GOC's approval of the project was actually contingent on the company's export performance.

Pursuant to section 771(5A)(D)(iii) of the Act, a subsidy is *de facto* specific if one or more of the following factors exists: (1) the number of enterprises, industries or groups thereof, which use a subsidy is limited; (2) there is predominant use of a subsidy by an enterprise, industry, or group; (3) there is disproportionate use of a subsidy by an enterprise, industry, or group; or (4) the manner in which the authority providing a subsidy has exercised discretion indicates that an enterprise or industry is favored over others. As explained in the Statement of Administrative Action (''SAA'') (H.R. Doc. No. 316, Vol. I, 103d Cong., 2d Session (1994) at 931), the fourth criterion normally serves to support the analysis of other *de facto* specificity criteria.

During the period 1991 through 1996, assistance under this program was distributed to a large number and wide variety of users in the majority of regions of Chile. Therefore, the program is not limited based on the number of users. The evidence also indicates that neither the salmon nor the fishing and aquaculture industry received a predominant or a disproportionate share of the total funding. Given our findings that the number of users is large and that there is no predominant or disproportionate use of the program by the salmon industry, we do not reach the issue of whether administrators of the program exercised discretion in awarding benefits. Accordingly, we preliminarily determine that the funding of projects by FONTEC is not specific and has not conferred countervailable subsidies to the Chilean salmon industry within the meaning of section 771(5) of the Act.

Of the several salmon-related projects funded by FONTEC, the GOC has argued in the alternative that the funding provided to the Instituto Tecnológico del Salmón, S.A. (''INTESAL'') falls within the definition of a non-actionable subsidy under Article 8 of the WTO Agreement on Subsidies and Countervailing Measures (''SCM Agreement''). Because we have preliminarily determined that the project funding provided by FONTEC does not constitute countervailable subsidies, we do not reach the issue of whether FONTEC's grants to INTESAL constituted a non-actionable subsidy.

C. Central Bank Chapter XIX

Chapter XIX of the Central Bank's Compendium of International Exchange Rules was designed to reduce the strain on Chile's foreign currency reserves following the country's external debt crisis at the beginning of the 1980s. Chapter XIX permitted non-resident investors who bought Chilean external debt to trade that debt in Chile for local currency to be used in carrying out investment projects in Chile. The debt swap and subsequent investment had to be authorized by the Executive Council of the Central Bank. Chapter XIX came into effect on May 14, 1985, and was abolished on August 3, 1995. No operations were carried out after 1991, however, because Chile's external debt appreciated in international markets, reducing the attractiveness of the debt swap operations.

Petitioners alleged that the Central Bank used its authority in approving the debt swaps to promote export-oriented industries and import substitution. Based on the evidence provided by the GOC, we have determined that the benefit, if any, of these debt swaps and equity investments is not specific.

Neither the laws nor the regulations concerning Chapter XIX debt for equity swaps contained any formal provision favoring exports or import substitution at the time the investments at issue were approved. Moreover, based on information provided by the GOC, nearly 30 percent of the operations carried out under Chapter XIX were for sectors producing non-traded goods. While certain anecdotal evidence exists regarding a bias towards export industries, other anecdotal evidence indicates that the Central Bank did not favor exporters in its authorizations. The GOC has claimed that the Central Bank's purpose in authorizing these transactions was to ensure that the parties were legally eligible to participate and that the investment was not fraudulent.

We note that the Central Bank rejected a large number of proposed operations. Because it was not obligated to publish its reasons for accepting or rejecting an application, we are unable to determine whether the Central Bank directed operations under Chapter XIX to export-oriented or import substituting industries. At verification, we intend to review closely the rejected proposals to determine if the Central Bank used discriminatory criteria to favor orientation towards specific sectors of the economy.

The GOC provided information on the amount of debt renegotiated and invested in each industry and region for each of the years in which Chapter XIX operations occurred. Only 4.4 percent of the operations were in the fishing and aquaculture sector; other sectors represented in Chapter XIX operations included mining, forestry, communications, and financial institutions, among others. Manufacture of paper and printing was the industry sector with the highest representation at nearly 20 percent of operations. Accordingly, we preliminarily determine that the farmed salmon industry was neither a predominant nor a disproportionate user of this program.

D. Export Credit Limits

Law Number 18,576 of 1986 governs lending limits for Chilean banks. Under this law, Chilean banks are prohibited from extending more than five percent of their paid-in-capital in non-guaranteed loans to any single borrower. (For guaranteed loans, the limit is 25 percent.) However, this law also allows Chilean banks to lend an additional five percent of their paid-in-capital to exporters for their foreign currency loans.

While this program allows a Chilean bank to lend a greater percentage of its paid-in capital to an exporter than to a customer that does not export, we have preliminarily determined that this does not confer a benefit on exporters. Based on the information submitted, it does not appear that non-exporting borrowers have less access to credit because, if their borrowings will exceed the lending limit at one bank, they can simply borrow from another commercial bank at equivalent rates and terms. We intend to examine the information closely at verification. Therefore, we preliminarily determine that the export credit limits do not constitute a countervailable subsidy within the meaning of section 771(5)(E)(ii) of the Act because there is no benefit conferred on exporters.

E. Law No. 18,449 (Stamp Tax Exemption)

Under Decree Law 3,475 of 1980, a stamp tax is levied on checks, letters of exchange, money orders, promissory notes and loan documents in Chile. The tax is levied on checks at the flat rate of 109 pesos, and on other types of documents at the rate of 0.1 percent of the capital amount per month, to a maximum of 1.2 percent *per annum*, or 0.5 percent on obligations payable on demand or with no specified maturity date. The stamp tax is paid at the time a loan is disbursed, as the issuing bank withholds the amount of the stamp tax

from the gross amount of the loan. Law 18,449 exempts documents relating to the financing of exports from this tax.

In the *Final Affirmative Countervailing Duty Determination: Standard Carnations from Chile,* 52 FR 3313, 3314 (February 3, 1987), the Department found the stamp tax exemption countervailable, stating: ''Neither the Government of Chile nor the respondent companies gave us clear explanations as to what is meant by 'export credit operations.' '' In this proceeding, the GOC has placed on the record the copies and translations of regulations relating to this program which describe the types of operations and instruments eligible for the exemption. We have previously determined that the non-excessive rebate or exemption of indirect taxes levied at the final stage is not considered a subsidy (*see, e.g., Final Negative Countervailing Determination: Welded Carbon Steel Line Pipe from Taiwan,* 50 FR 53364 (December 31, 1985)). Because the amount of the exemption is not greater than the amount of the stamp tax due, we preliminarily determine that this program does not confer countervailable benefits within the meaning of section 771(5)(E) of the Act.

F. Article 59 of Decree Law 824

Under Article 59 of Decree Law 824, effective January 1, 1994, all foreign service providers doing business in Chile are required to pay income tax at the rate of 35 percent. This tax is withheld by the Chilean company to which the service is provided and then paid to the government. The law exempts the foreign service providers from paying the tax if the income was for certain services related to exportable goods and services produced in Chile. If the services are eligible for the exemption, the Chilean company (*i.e.*, the purchaser of the services) is also exempt from the withholding requirement.

We found no evidence that the benefit, if any, resulting from the exemption from the tax and the withholding requirement accrues to the subject merchandise. Therefore, we preliminarily determine that this program does not constitute a countervailable subsidy.

III. Programs Preliminarily Determined To Be Not Used

The following programs were not used:

A. Institute for Technological Research (INTEC)
B. Central Bank Chapter XVIII
C. Export Promotion Fund
D. CORFO Export Credits and Long-Term Export Financing
E. Law No. 18,392 (Tax Exemptions)

IV. Programs Preliminarily Determined Not To Exist

Based on information provided by the GOC, we preliminarily determine that the following programs do not exist:

A. GOC Guarantee of Private Bank Loans
B. Import Substitution Subsidy for New Industries
C. Tax Deductions Available to Exporters

Summary

The total estimated preliminary net countervailable subsidy rate for all producers or exporters of fresh Atlantic salmon in Chile is 0.62 percent, **AD VALOREM,** which is *de minimis.* Therefore, we preliminarily determine that countervailable subsidies are not being provided to producers, or exporters of fresh Atlantic salmon in Chile.

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondents prior to making our final determination.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department make its final determination.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing will be held on March 6, 1998, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than February 24, 1998. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than March 3, 1998. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 355.38 and will be considered if received within the time limits specified above.

This determination is published pursuant to section 703(f) of the Act.

Dated: November 10, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30387 Filed 11–18–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents cover a wide variety of technical arts including: A new type kinetic energy projectile; a new ceramic nanocomposite; a device to locate the position of impact of a projectile on a

target and an impact absorbing sole for parachutists.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Kinetic Energy Projectile with Fin Leading Edge Protection mechanisms.

Inventor: Ameer G. Mikhail.

Patent Number: 5,668,347.

Issue Date: September 16, 1997.

Title: Device for Locating the Position of Impact of a Projectile.

Inventors: George M. Thomson, Thomas W. Kottke and Paul R. Berning.

Patent Number: 5,669,608.

Issue Date: September 23, 1997.

Title: Sion Low Dielectric Constant Ceramic Nanocomposite.

Inventors: Gary Gilde, Parimal Patel, Clifford Hubbard, Brain Pothier, Thomas Hynes, William Croft and Joe Wells.

Patent Number: 5,677,252.

Issue Date: October 14, 1997.

Title: Impact Absorbing Soles for Parachutist.

Inventors: Jim Faughn and Harrison P. Crowell, III.

Patent Number: 5,675,915.

Issue Date: October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rausa, Technology Transfer Office, AMSRL–CS–TT/Bldg 434, U.S. Army Research Laboratory, Aberdeen Proving Ground, Maryland 21005–5425, tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 97–30293 Filed 11–18–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 19, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 13, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Final Performance Report for the Business and International Education Program (BIE).

Frequency: At the Completion of the Project Period.

Affected Public: Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 30

Burden Hours: 150

Abstract: The data collected through the final performance report will enable ED officials to determine the impact of the BIE federal funds on its recipients. US/ED will use the information collected to meet Government Performance and Results Act requirements and to provide budget justifications.

Office of Postsecondary Education

Type of Review: Extension.

Title: Guaranty Agency Quarterly/Annual Report.

Frequency: Annually.

Affected Public: Business or other for-profit; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 37

Burden Hours: 2,941

Abstract: The Guaranty Agency Quarterly/Annual Report is submitted by 37 agencies operating a student loan insurance Program under agreement with the Department of Education. These reports are used to evaluate agency operations, make payments to agencies as authorized by law, and to make reports to Congress.

[FR Doc. 97–30317 Filed 11–18–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Petroleum Council; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

NAME: National Petroleum Council (NPC).

DATE AND TIME: Thursday, December 11, 1997, 9:00 am.

ADDRESS: ANA Hotel, Grand Ballroom, 2401 M Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy, FE–5, Washington, D.C. 20585, Telephone: (202) 586–3867.

SUPPLEMENTARY INFORMATION:

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda:

—Call to order and introductory remarks by Joe B. Foster, Chair of the NPC.
—Remarks by the Honorable Federico F. Peńa, Secretary of Energy.
—Status report from NPC Committee on Product Supply.
—Presentation on monograph of NPC's first 50 years.
—Administrative matters.
—Discussion of any other business properly brought before the NPC.
—Public comment (10-minute rule).
—Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. This notice is being published less than 15 days in advance of the meeting due to certain programmatic issues which had to be resolved prior to publication in the **Federal Register**.

Transcripts: Available for public review and copying at the Public Reading Room, Room IE–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on November 13, 1997.

Althea T. Vanzego,

Acting Deputy Committee Advisory, Management Officer.

[FR Doc. 97–30345 Filed 11–18–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 97–48–NG]

Office of Fossil Energy; Engage Energy US, L.P.; 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 an Order granting Engage Energy US, L.P. authority to import from Canada up to 30.5 MMCF per day of natural gas for a ten-year period beginning on November 1, 1998. This natural gas will be purchased from six Canadian producers and may be imported near Emerson, Manitoba/Noyes, Minnesota, or at alternative border points where transportation facilities are accessible to Engage.

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, SW., 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. November 6, 1997.

Wayne E. Peters,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 97–30349 Filed 11–18–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 97–70-NG et al;]

Office of Fossil Energy, Plum Street Energy Marketing, Inc. et al, Orders Granting, Transferring 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, transferring 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, Docket Room, 3F–056, Forrestal Building, 1000 Independence 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 November 6, 1997.

Wayne E. Peters

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

Attachment

APPENDIX—BLANKET IMPORT/EXPORT AUTHORIZATIONS GRANTED

Order No.	Date issued	Importer/Exporter FE docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1303	10/01/97	Plum Street Energy Marketing, Inc., 97–70–NG.	75 Bcf		Import and export up to a combined total from and to Canada.
1304	10/03/97	CNG Energy Services Corporation, 97–71–NG.	200 Bcf	200 Bcf	Import and export from and to Canada.
			200 Bcf	200 Bcf	Import and export from and to Mexico.
1305	10/03/97	Pacific Gas and Electric Company Core Procurement Department (Formerly Gas Supply Business Unit), 97–69–NG.	600 Bcf		Import from Canada.
1306	10/03/97	DEK Energy Company, 97–63–NG	73 Bcf		Import from Canada.
1307	10/10/97	Inland pacific Energy Services Ltd., 97–73–NG.	50 Bcf	50 Bcf	Import and export from and to Canada.

APPENDIX—BLANKET IMPORT/EXPORT AUTHORIZATIONS GRANTED—Continued

Order No.	Date issued	Importer/Exporter FE docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1308	10/16/97	Tenaska Marketing Ventures, 97–72–NG	200 Bcf		Import and export up to a combined total from and to Canada and Mexico.
1309	10/16/97	San Diego gas & Electric Company, 97–67–NG.	73 Bcf		Import from Canada.
1310	10/16/97	Avista Energy, Inc., 97–64–NG	219 Bcf		Import from Canada.
1311	10/16/97	Centra Gas Ontario, Inc., 97–74–NG		16 Bcf	Export to Canada.
1312	10/22/97	North Atlantic Pipeline Partners, L.P., 97–82–NG.	500 Bcf		Import from Canada.
1313	10/24/97	Murphy Gas Gathering Company, 97–83–NG.	75 Bcf		Import from Canada.
1314	10/24/97	Northern Utilities, Inc., 97–91–NG	15 Bcf		Import from Canada.
1315	10/24/97	Suncor Energy Inc. (Formerly Suncor Inc.), 97–85–NG.	127.66 Bcf		Import from Canada.
1316	10/24/97	Natural Gas Clearinghouse, 97–78–NG	600 Bcf	330 Bcf	Import up to a combined total from Canada and Mexico. Export up to a combined total to Canada and Mexico.
1317	10/24/97	Paramount Resources U.S. Inc., 97–84–NG	300 Bcf		Import from Canada.
1318	10/27/97	Williams Energy Services Company, 97–79–NG.	200 Bcf		Import from Canada.
1319	10/27/97	Jonan Gas Marketing Inc., 97–77–NG	100 Bcf		Import and export up to a combined total from and to Canada.
1320	10/27/97	Victoria International, Ltd., 97–86–NG	10 Bcf		Import and export up to a combined total from and to Canada.
1321	10/27/97	Ocean State Power 97–92–NG	36.5 Bcf		Import and export up to a combined total from and to Canada.
1322	10/27/97	Enron Capital & Trade Resources Corporation, 97–75–NG.	400 Bcf	400 Bcf	Import and export from and to Mexico.
1323	10/27/97	Enron Capital & Trade Resources Corporation, 97–76–NG.	1,000 Bcf	1,000 Bcf	Import and export from and to Canada.
1324	10/31/97	United States Gypsum Company, 97–93–NG.	7.3 Bcf		Import from Canada.
1325	10/31/97	Corpus Christi Gas Marketing, L.P., 97–90–NG.	8 Bcf	290 Bcf	Import up to a combined total from Canada and Mexico. Export up to a combined total to Canada and Mexico.
1325	10/31/97	Corpus Christi Gas Marketing, L.P., 90–79–NG.			Vacated.
1325	10/31/97	Corpus Christi Gas Marketing, L.P., 96–04–NG.			Vacated.

[FR Doc. 97–30350 Filed 11–18–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 97–87–NG]

Office of Fossil Energy; PROGAS U.S.A., Inc.; 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 an order granting ProGas U.S.A., Inc. authority to import from Canada up to 26,500 Mcf per day of natural gas for the period of November 1, 1998, through October 31, 2008. This natural gas will be purchased from ProGas Limited and imported near Noyes, Minnesota.

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, SW., Washington, DC 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. November 6, 1997.

Wayne E. Peters,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 97–30346 Filed 11–18–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 97–88–NG]

Office of Fossil Energy; Progas U.S.A., Inc. 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 an order granting ProGas U.S.A., Inc. authority to import from Canada up to 7,850 Mcf per day of natural gas for the period of November 1, 1997, through March 1, 2007. This natural gas will be purchased from ProGas Limited and imported near Eastport, Idaho.

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. November 6, 1997.

Wayne E. Peters,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 97–30347 Filed 11–18–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 97–89–NG]

Office of Fossil Energy; ProGas U.S.A., Inc. 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 an order granting ProGas U.S.A., Inc. authority to import from Canada up to 30,000 Mcf per day of natural gas for the period of November 1, 1998, through March 1, 2008. This natural gas will be purchased from ProGas Limited and imported near Port of Morgan, Montana.

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, SW., Washington, DC 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. November 6, 1997.

Wayne E. Peters,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import and Export Activities, Office of Fossil Energy.

[FR Doc. 97–30348 Filed 11–18–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 97–81–NG]

Office of Fossil Energy; Sierra Pacific Power 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 an order granting Sierra Pacific Power Company authority to import from Canada up to 15,000 MMBtu per day of natural gas for the period of April 1, 1997, through March 31, 2000. This natural gas will be purchased from Amoco Canada Petroleum Company Ltd. and may be imported near Eastport, Idaho/Kingsgate, British Columbia.

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, SW., Washington, DC 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. November 7, 1997.

Wayne E. Peters,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 97–30351 Filed 11–18–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–71–000]

ANR Pipeline Company; Notice of Application

November 13, 1997.

Take notice that on November 5, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, MI 48243, filed in Docket No. CP98–71–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by transfer 11.74 miles of 10-inch pipeline located in Wheeler County, TX and Beckham County, OK, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR proposes to transfer to its affiliate, ANR Field Services Company at net book value, its Mayfield Lateral located in Beckham County, OK and Wheeler County, TX.

The facilities, it is said, consists of 11.74 miles of 10-inch pipeline and extent from the Mayfield Gathering System to an intersection with ANR's 16-inch trunkline 496–1602.

ANR requests that the Commission declare that the facilities are gathering facilities exempt from the Commission's jurisdiction under Section 1(b) of the Natural Gas Act.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before December 4, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30309 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–769–000]

Colorado Interstate Gas Company; Notice of Site Visits

November 13, 1997.

The Office of Pipeline Regulation (OPR) will conduct a site visit with representatives of Colorado Interstate Gas Company, of its proposed Campo Lateral in Las Animas and Baca Counties, Colorado. The site visit will

take place on November 19 and 20, 1997.

All interested parties may attend. Those planning to attend must provide their own transportation.

For further information, please contact Paul McKee at (202) 208–1088.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30371 Filed 11–18–97; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–68–000]

Natural Gas Pipeline Company of America; Notice of Request under Blanket Authorization

November 13, 1997.

Take notice that on November 5, 1997, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP98–68–000 a request pursuant to Sections 157.205, and 157.212, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate facilities in Lonoke County, Arkansas, under Natural's blanket certificate issued in Docket No. CP82–402–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural proposes to install a 2-inch meter and 3-inch side tap facilities for an interconnection with Arkla, a Division of Noram Energy Corporation (Arkla). These facilities will be constructed to deliver approximately 1,000 MMBtu per day of natural gas to Arkla in Cabot, Arkansas. They are estimated to cost $55,000. Natural states that it has sufficient capacity to provide these services at the proposed delivery point without detriment or disadvantage to Natural's peak day and annual delivery capacity.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no request is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30307 Filed 11–18–08; 8:45am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–73–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

November 13, 1997.

Take notice that on November 6, 1997, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP98–73–000 a request pursuant to Sections 157.205, and 157.211, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate an existing delivery point under Texas Gas's blanket certificate issued in Docket No. CP88–686–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas proposes to operate an existing 3-inch delivery meter and related facilities that was originally constructed under the authority of Section 311 of the Natural Gas Policy Act of 1978 to transport gas for Natural Gas of Kentucky, Inc. (NGKY). The facilities are located at mile 3+2750 on Texas Gas's Russellville Bowling Green 8-inch line in Logan County, Kentucky. Texas Gas states that because only interruptible transportation service is proposed to be provided to NGKY at this point, the proposal will have no significant effect on Texas Gas's peak day and annual deliveries, and service to NGKY through this point can be accomplished without detriment to Texas Gas's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30310 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–50–001]

Union Electric Company; Notice of Filing

November 13, 1997.

Take notice that on July 9, 1996, Union Electric Company tendered for filing its non-rate terms and conditions 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 November 25, 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. 97–30316 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–70–000]

The Union Light, Heat and Power Company; Notice of Application

November 13, 1997.

Take notice that on November 5, 1997, The Union Light, Heat and Power

Company (Union Light), 139 East Fourth Street, Cincinnati, Ohio 45202, filed in Docket No. CP98–70–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to modify the service currently provided under Rate Schedule X–4, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that under Rate Schedule X–4, Union Light provides for the transportation of gas to The Cincinnati Gas & Electric Company (Cincinnati) for the account of Columbia Gas Transmission Corporation (Columbia). It is further stated that for such service, Union Light bills Columbia and then Cincinnati reimburses Columbia. Union Light states that Columbia's involvement in the transportation service is no longer necessary due to changed delivery points. Therefore, Union Light states that it proposes to modify the service currently provided under Rate Schedule X–4 to reflect that the service rendered by Union Light to Cincinnati no longer requires Columbia's involvement and that the gas transported by Union Light on behalf of Cincinnati may include customer-owned gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 4, 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Union Light to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30308 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–53–000 *et al.*]

NE Hub Partners, L.P.; Notice of Availability of the Environmental Assessment for the Proposed NE Hub Partners, L.P. Tioga Storage Project

November 13, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on both the natural gas storage field and pipeline facilities proposed by NE Hub Partners, L.P. (NE Hub) in the above-referenced docket and the related brine evaporation/salt plant proposed by United Salt Northeast, L.L.C. (USN).

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of NE Hub's proposed underground gas storage facility and related pipeline facilities, including:

- A freshwater intake pumping station at the Cowanesque Reservoir;
- 3.9 miles of 12-inch-diameter freshwater pipeline to transport water to the leaching operation;
- Two cavern leaching/natural gas storage wells;
- Two gas storage caverns with a capacity of 3 billion cubic feet each;
- A leaching plant facility including electrical substation, emergency generator, warehouse, office/control room, four 300,000 barrel storage tanks, six 4,000 barrel storage tanks, and other appurtenant facilities;
- A gas system facility, including a compression facility (18,750 horsepower total) with exhaust mufflers and aftercoolers for gas injection to and withdrawal from *et al.*
- The storage caverns, meter station, electrical substation, emergency generator, and other appurtenant facilities;
- Four segments of 26-inch-diameter transmission pipeline totaling 12.3 miles;
- 7.7 miles of 12-inch-diameter brine and freshwater pipelines;
- 5.0 miles of 4-inch-diameter fuel gas and residual/mineral salt purge pipelines;
- 1.4 miles of 12-inch-diameter freshwater, mid-brine return, mid-brine, and saturated brine pipelines;
- 3.7 miles of 24-inch-diameter gas storage pipeline; and
- Two meter stations.

In conjunction with these facilities, USN proposes to construct and operate the following:

- A railroad siding turnout and truck/hopper railcar bulk loading station to ship commercial salt products; and
- A brine evaporation/salt plant to dispose of the brine by production of commercial salt products, and other facilities to the extent needed for salt production, storage, and transportation.

The purpose of the proposed facilities would be to provide two high deliverability natural gas storage caverns with a capacity of up to 3 billion cubic feet per cavern. The storage facility near tioga, Pennsylvania would be interconnected with certain interstate and intrastate pipelines. The gas injection/withdrawal facilities would be designed to allow the gas storage facility to withdraw natural gas from various existing pipelines during periods of low gas demand and inject the gas under high pressure into the storage caverns. During periods of high gas demand, the natural gas would be withdrawn from the caverns and released into the various pipelines at the appropriate pressure. The injection/withdrawal facilities would be designed to inject 250 million cubic feet of gas a day and withdraw 500 million cubic feet of gas a day. The injection/withdrawal cycle would be 20 days/10 days.

In conjunction with the storage facilities, USN, would receive the brine from NE Hub via pipeline and develop a commercial salt business at a site about 1.5 miles northeast of Tioga, Pennsylvania.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance

Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send *two* copies of your comments to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label *one* of those copies for the attention of the Environmental Review and Compliance Branch II, PR–11.2;
- Reference Docket No. *CP96–53–000;* and
- Mail your comments so that they will be received in Washington, DC on or before December 15, 1997.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived.

Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30306 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Project No. 11393–001 Alaska

City of Saxman; Notice of Availability of Final Environmental Assessment

November 13, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the major, unconstructed, Mahoney Lake Hydroelectric Project. The project would be located on Upper Mahoney lake and Upper Mahoney Creek near Ketchikan in Southeast Alaska.

On July 14, 1997, the Commission staff issued and distributed to all parties a Draft Environmental Assessment (DEA) on the project, and requested that comments be filed with the Commission within 30 days. Comments were filed and are addressed in the Final Environmental Assessment (FEA).

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30315 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters

November 13, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-project Use of Project Lands and Waters.

b. *Project No.:* 1494–146.

c. *Date Filed:* September 4, 1997.

d.. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola.

f. *Location:* The proposed facilities would be located on Monkey Island on Grand Lake O' the Cherokees in Delaware County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mary Von Drehle, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. *FERC Contact:* Jon Confrancesco, (202) 219–0079.

j. *Comment Date:* December 18, 1997.

k. *Description of Project:* Grand River Dam Authority, licensee for the Pensacola Project, requests Commission authorization to permit Glenn Tucker, d/b/a Newport Village (permittee) to install five new floating, covered boat docks, containing a total of 57 slips and 7 additional slips to an existing, covered, floating, boat dock with 9 slips. The existing and proposed dock facilities contain a total of 73 slips. The proposed docks would be used by the local homeowner's association.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedures, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title, ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also

be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30311 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing; Notice That the Application Is Not Ready for Environmental Analysis; Notice of Solicitation of Interventions and Protests; Notice of Intent To Conduct Public Scoping Meetings and Site Visit; and Notice of Solicitation of Written Scoping Comments

November 13, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Major License.

b. *Project No.*: 2017–011.

c. *Date Filed*: February 26, 1997.

d. *Applicant*: Southern California Edison Company.

e. *Name of Project*: Big Creek No. 4 Hydropower Project.

f. *Location*: On the San Joaquin River near the town of Auberry in Madera, Tulare, and Fresno Counties.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. § 791(a)–825(r) and 18 CFR sections 4.51 and 16.9.

h. *Applicant Contact*: Mr. C. Edward Miller, Manager of Hydro Generation, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, CA 91770, (818) 302–1564.

i. *FERC Contact*: John Ramer, (202) 219–2833.

j. *Deadline Date*: January 16, 1998.

k. *Status of Application and Environmental Analysis*: This application has been accepted for filing, but it is not ready for environmental analysis—see attached paragraph E1.

l. *Invitation for Written Scoping Comments*: Interested individuals, organizations, and agencies with environmental expertise are invited to assist the staff in identifying the scope of environmental issues that should be analyzed in the environmental analysis once the application is determined ready for environmental analysis by submitting written scoping comments. To help focus these comments, a scoping document outlining subject areas which could be addressed in an environmental analysis will be mailed to all agencies and interested individuals on the Commission mailing list. Copies of the scoping document may also be requested from the staff.

Persons who have views on the issues or information relevant to the issues may submit written statements for inclusion in the public record. Those written comments should be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, by the deadline date shown in item (j) above. All written correspondence should clearly show the following caption on the first page: Big Creek No. 4 Hydropower Project, FERC No. 2017–011.

m. *Invitation to Participate in Public Scoping Meetings and Site Visit*: A scoping meeting oriented towards the public will be conducted on December 15, 1997, beginning at 6:00 PM, at Sierra National Forest, Minaret District Office in North Fork, California. A scoping meeting oriented towards the agencies will be conducted on December 16, 1997, beginning at 8:00 AM, at the Sierra National Forest Supervisor's Office at 1600 Tollhouse Road, in Clovis, California.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and assist staff in identifying the scope of environmental issues that should be analyzed in any environmental analysis the Commission's staff undertakes.

Objectives

At the scoping meetings the FERC staff will: (1) outline preliminary environmental issues they believe are related to the proposed project and need to be evaluated; (2) identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in an environmental analysis; (4) solicit from meeting participants all available information relevant to the identified resource issues; and (5) request that the meeting participants provide comments on staff's preliminary assessment of the issues and alternatives that should be evaluated in an environmental analysis, including any suggestions for additional issues and alternatives which should be evaluated.

Procedures

The meetings will be recorded by a court recorder and all statements thereby become a part of the record of the Commission proceedings on the Big Creek No. 4 Project. Individuals presenting statements at the meeting will be asked to identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying issues to be addressed in any environmental analysis.

Persons choosing not to speak at the meetings, but who have views on the issues or relevant information related to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments may be filed with Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, until January 16, 1998.

All written correspondence should show the following caption on the first page: Big Creek No. 4 Hydropower Project, FERC Project No. 2017–011.

Site Visit

A site visit to the Big Creek No. 4 Hydropower Project is planned for December 15, 1997. Those who wish to attend should plan to meet at the Auberry Post Office, in Auberry, California at 1:00 PM.

Any questions regarding this notice should be directed to John Ramer (environmental coordinator), at (202) 219–2833.

n. *Invitation to Intervene or Protest*: Intervenors are reminded of the Commission's Rules of Practice and Procedure requiring parties filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project. Further, if a party or intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. See attached paragraph B1.

o. *Description of the Project:* The proposed project would consist of: (1) an existing 875-foot-long, 250-foot-high concrete dam, impounding a 35,033-acre-foot reservoir; (2) a combination penstock/pressure tunnel about 11,770 feet long; (3) one powerhouse with a total installed capacity of 98,822 kilowatts: (4) two, 220-kilovolt transmission lines totaling about 87 miles in length; (5) a bypassed river reach totaling about 6.3 river miles; and (6) appurtenant facilities.

p. This notice contains the standard paragraphs B1 and E1.

q. *Locations of the Application:* A copy of the application is available for inspection or reproduction at the Commission's Public Reference and

Files Maintenance Branch, located at 888 First Street, NE, Room 2A–1, Washington, DC 20426, or by calling (202) 208–2326. A copy is also available for inspection and reproduction at C.E. Miller, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California, 91770, at (818) 302–1564.

B1. *Protest or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 C.F.R. sections 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E1. *Filing and Service of Responsive Documents*—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, and prescriptions.

All filings must: (1) bear in all capital letters the title ''PROTESTS'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to: Director, Division of Licensing and Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 62–15, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30312 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Extension of License Term

November 13, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Extension of License Term.

b. *Project No.:* 3030–012.

c. *Licensee:* Antrim County, Michigan.

d. *Name of Project:* Elk Rapids.

e. *Location:* Elk River, Antrim County, Michigan.

f. *Pursuant to:* Federal Power Act, 16 U.S.C. §§ 792–828c.

g. *Licensee Contact:* Peter Garwood, Office of Coordinator/Planner, P.O. Box 187, Bellaire, MI 49615, (616) 533–6265.

h. *FERC Contact:* Dean C. Wight, (202) 219–2675.

i. *Comment Date:* December 2, 1997.

j. *Description of Proposed Action:* The licensee requests an extension of the 20-year term of the project license. The current term expires February 28, 2001. The requested extension would cause the license to expire on December 31, 2014.

The licensee states that, in setting the license term for 20 years, the Commission erroneously relied on precedent for projects which operated prior to receiving licenses. The licensee further states that the project will not support the cost of relicensing (the licensee must file a relicense application in February 1999) and that the present 20-year term is insufficient for it to recover the cost of developing the project.

k. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30313 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

November 13, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 11077–018.

c. *Date Filed:* October 1, 1997.

d. *Applicants:* Alaska Power & Telephone Company Goat Lake Hydro, Inc.

e. *Name of Project:* Goat Lake.

f. *Location:* Pitchfork Falls, near the town of Skagway, in the First Judicial District in Southeast Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Robert S. Grimm, Alaska Power & Telephone

Company, P.O. Box 222, Port Townsend, WA 98368, (360) 385–1733. Alan D. See, Goat Lake Hydro, Inc., P.O. Box 459, Skagway, AK 99840, (907) 983–2902.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Comment Date:* December 26, 1997.

k. *Description of the Request:* The purpose of the transfer to Goat Lake Hydro, Inc. is to facilitate the development and financing of the project.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protects, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30314 Filed 11–18–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5924–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS for Stationary Gas Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS (Subpart GG) for Stationary Gas Turbines; OMB Control Number 2060–0028; expiring 1/31/98. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 19, 1997.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1071.06.

SUPPLEMENTARY INFORMATION:

Title: NSPS (Subpart GG) for Stationary Gas Turbines; OMB Control Number 2060–0028; EPA ICR No. 1071.06; expiring 1/31/98. This is a request for extension of a currently approved collection.

Abstract: NSPS for stationary gas turbines (GG) were promulgated on September 10, 1979 to regulate the emissions of Nitrogen Oxide (NO_X) and Sulfur Dioxide (SO_2) into the ambient air supply. The EPA is charged under section 111 of the Clean Air Act of 1990, as amended, to establish these standards for new stationary sources that reflect application of the best demonstrated technology. In addition, section 114(a) of the Clean Air Act provides for monitoring, recordkeeping, and reporting requirements for these standards.

Owner/operators of affected facilities must make one-time only reports which include the following notifications: date of construction/reconstruction; anticipated and actual dates of start-up; any physical or operational change which may increase the SO_2 or NO_X emission rates; commencement date for the continuous monitoring system performance demonstration; and date and results of the initial performance test. Plant owner/operators must also provide semi-annual reports of excess emissions, as promulgated in the December 13, 1990 **Federal Register** (55 FR 51378).

Owner/operators must maintain records of the occurrence and duration of any start-up, shutdown, or malfunction in operations, or any periods during which the monitoring system is inoperative. Recordkeeping is also required to document process information regarding the: sulfur and nitrogen content of the fuel; fuel:water ratio; rate of fuel consumption; and ambient conditions. This latter recordkeeping function involves daily measurements from the continuous monitoring system to monitor ambient conditions, and to record the fuel consumption and the ratio of water to fuel being fired in the turbine only for plants which use water or steam injection to control NO_X emissions. There is generally no additional burden on the owner/operator to provide this information because adequate recordkeeping is required of plant operations.

It is important to note that if these data and reports are not collected, the Agency has no means for ensuring that compliance with the standards is being achieved and/or maintained by the new, modified, or reconstructed sources which are subject to regulation. In the absence of information collection requirements, compliance with the standards could be ensured only through continuous on-site inspections by regulatory agency personnel. Consequently, not collecting the information would result in either greatly increased expenditures of resources, or the inability to ensure compliance with the standards. In addition to the purposes mentioned above, this kind of information is used for targeting plants for inspections and as evidence when compliance cases are taken to court.

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. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. Any information submitted to the Agency for which a claim of confidentiality is requested will be safeguarded according to the Agency policies set forth in Title 40, chapter 1, part 2, subpart B: Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; FR

42251, September 28, 1978; 44 FR 17674, March 23, 1979). The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 8/20/97; No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 51 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Plant owner/operators of stationary gas turbines.

Estimated Number of Respondents: 625

Frequency of Response: Annual notification reports, and semi-annual emission reports.

Estimated Total Annual Hour Burden: 76,681.

Estimated Total Annualized Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1071.06 and OMB Control No. 2060–0028 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 13, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–30377 Filed 11–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5924–4]

New York State Prohibition on Marine Discharges of Vessel Sewage; Final Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Regional Administrator, Environmental Protection Agency (EPA) Region II has affirmatively determined, pursuant to section 312(f) of Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 100–4, (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the coastal waters of Mamaroneck Harbor, Village of Mamaroneck, County of Westchester, State of New York.

A petition was made by the New York State Department of Environmental Conservation (NYSDEC) in cooperation with the Village of Mamaroneck. Upon receipt of this affirmative determination in response to this petition, NYSDEC will completely prohibit the discharge of sewage, whether treated or not, from any vessel in Mamaroneck Harbor in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a). Notice of the Receipt of Petition and Tentative Determination was published in the **Federal Register** on July 16, 1997. Comments on the tentative determination were accepted during a 30-day period which closed on August 15, 1997. No comments were received.

The Village of Mamaroneck is located on Long Island Sound. Mamaroneck Harbor encompasses numerous wetlands, marshes and mud flats including Guion Creek, Otter Creek, Salt Creek and Van Amringe Mill Pond. The No-Discharge Zone includes waters not indexed lying northerly of a line drawn in a northeasterly direction from the southern tip of the sea wall at Orienta Point near the Orienta Yacht Club at the foot of Rushmore Avenue in Mamaroneck, to a point on the mainland immediately north of Spike Island at the intersection of the shoreline and the extension of the line to the center gable of large stone and stucco residence at No. 6 Shore Road in the Greenhaven section within the City of Rye.

Information submitted by the State of New York and the Village of Mamaroneck states that there are three existing pump-out facilities available to service vessels which use Mamaroneck Harbor, and one additional facility proposed for construction. One facility is owned and operated by the Mamaroneck Municipal Marina. This facility is open continuously and charges no fee for pump-out services. It can service vessels up to 80 feet in length with up to a 8 foot draft based on the mean low water depth. A second unit is planned at this facility with the same operating schedule.

The other facilities are privately owned and charge no fee for pump-out services to patrons. They are located at Nichols Boat Yard and Boston Post Road Boat Yard. Operating hours for Nichols Boat Yard pump-out are 0900 to 1700 hours, Monday through Friday and by appointment on the weekend. It can service vessels up to 40 feet in length with up to a 6 foot draft based on the mean low water depth. The other facility is located at the Boston Post Road Boat Yard and operates from 0830 to 1630 Monday through Friday. Length and draft restrictions are 50 feet and 5.1 feet based on mean low water depth. Within seven nautical miles of Mamaroneck Harbor are five other locations that provide pump-out facilities.

Vessel waste generated from the pump-out facilities in Mamaroneck Harbor is disposed of in the Village of Mamaroneck Waste Water Treatment Plant. This plant operates under a State Pollutant Discharge Elimination System (SPDES) permit issued by the New York State Department of Environmental Conservation.

According to the State's petition, the maximum daily vessel population for the waters of Mamaroneck Harbor is approximately 1160 vessels. This estimate is based on summer weekend/holiday levels of usage and includes 1040 vessels berthed in marinas of Mamaroneck Harbor and less than 120 transient vessels in Mamaroneck Harbor.

The EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Mamaroneck Harbor in the Village of Mamaroneck, New York. A final determination on this matter has been made and will result in a New York State prohibition of any sewage discharges from vessels in Mamaroneck Harbor.

Dated: November 4, 1997.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97–30379 Filed 11–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5924–3]

Science Advisory Board; Notification of Public Advisory Committee Meeting; December 1997

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Drinking Water Committee (DWC) of the Science Advisory Board (SAB) will hold a public meeting beginning on Thursday, December 4, 1997 beginning at 9:00 a.m. and ending not later than 5:00 p.m. (Eastern Time) on December 5, 1997. The meeting will be held in Room 2103-Mall of the EPA Headquarters Building, 401 M Street, S.W., Washington, DC 20460.

The purpose of the meeting is to discuss a number of issues that are of importance to the Agency's future activities under the recently amended Safe Drinking Water Act. The Drinking Water Committee will receive briefings on: (a) A notice of data availability relevant to the Stage I Disinfection Byproducts Rule and the Interim Enhanced Surface Water Treatment Rule, (b) the EPA's Draft Drinking Water Contaminant Candidate List, (c) prioritization process for future disinfection byproduct research, (d) a pilot project for the Integrated Risk Information System (IRIS), (e) the status of a number of risk assessment research projects conducted jointly between EPA and the International Life Sciences Institute (ILSI), (f) probabilistic risk assessment techniques, and (g) the EPA cumulative risk policy.

FOR FURTHER INFORMATION CONTACT: Single copies of the background information for this review, or the meeting agenda, can be obtained by contacting Mr. Thomas O. Miller, Designated Federal Officer for the Drinking Water Committee, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW, Washington, DC 20460; by telephone at (202)260–5886; by fax at (202) 260–7118 or via the INTERNET at: miller.tom@epamail.epa.gov, or by contacting Ms. Mary L. Winston at (202) 260–8414, by fax at (202) 260–7118, and by INTERNET at: winston.mary@epamail.epa.gov.

Providing Oral or Written Comments at SAB Meetings

Anyone wishing to make an oral presentation to the Committee must contact Mr. Miller, in writing (by letter, fax, or INTERNET—at the INTERNET address) no later than 12 noon (Eastern Standard Time) Monday, November 28, 1997, in order to be included on the Agenda. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public.

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Written comments received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: November 13, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–30378 Filed 11–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44644; FRL–5753–7]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of environmental release data on cyclohexane (CAS No. 110–827). These data were submitted pursuant to an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, D.C. 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with procedures specified in section 4(d) of TSCA.

I. Test Data Submissions

Environmental release data for cyclohexane were submitted by the Cyclohexane Panel of the Chemical Manufacturers Association (CMA). The seven Panel companies include: Chevron Chemical Company; CITGO Refining Chemicals Co., LP; E.I. du Pont de Nemours Company; Huntsman Corporation; Koch Industries Inc.; Phillips Petroleum Company; and Sun Company, Inc. The data was submitted pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR 799.5000 and represents the last study report required under the enforceable consent agreement. EPA received the data on September 19, 1997. The consent agreement signed by the cyclohexane producers stipulated that within 3 months following submission of the last study report required under the agreement, the companies would submit a final report to EPA summarizing the then current data on environmental releases of cyclohexane from facilities that manufacture, process or use cyclohexane. The purpose of this product stewardship program was to reduce cyclohexane emissions. As reported by the Panel companies, cyclohexane environmental emissions were decreased by 52.5% during a 5 year period from 1991 to 1995 and 57% as compared to the total cyclohexane emissions reported in the 1989 Toxic Release Inventory database. Cyclohexane is found in a number of consumer products including spray paint and spray adhesives. It is also available as a laboratory solvent.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44644). This record includes a copy of the report indicated in this notice. The record is available for inspection from 12 noon to 4:00 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460. Requests for documents should be sent in writing to: Environmental

Protection Agency, TSCA Nonconfidential Information Center (7407), 401 M St., SW., Washington, DC 20460 or fax: (202) 260-5069 or e-mail: oppt.ncic@epamail.epa.gov.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: November 4, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–30384 Filed 11–18–97; 8:45 am]

BILLING CODE 6560–50–F

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.

Internaitonal Shipping Management USA, Inc., 1630 Bath Avenue, Brooklyn, NY 11214, Officer: Gary Solovey, President

U.S. SIGO INC., 8016 N.W. 68th Street, Miami, FL 33160, Officer: Roman Martinez, President

Express Shipping Service, Inc., 1075 Edward Street, Linden, N.J. 07036, Officers: Leonid Ivanutenko, President; Mikhail Dyakovetsky, Vice President

Atlas Freight Systems, Inc., 525 North Sam Houston Parkway East, Suite 655, Houston, TX 77060, Officers: James P. Middleton, President; Lisa A. Barragan, Vice President

Scott Container Services, Inc., 9607 South Dearborn, Detroit, MI 48209, Officers: Charles H. Scott, President, Sheila Pullen, Vice President

Logisticon, Incorporated, 305 E. Poplar Avenue, Carrboro, NC 27510, Officer: John Marshall, III, President

Cargo Transport Inc., 18000 International Blvd., Suite 400, Seattle, WA 98188, Officers: Sonny Joe Sanders, President; Larry K. Stauffer, Vice President

DAMAK Leasing & Financial, Inc., 20 Commerce Street, Suite 14–15, Flemington, NJ 08822, Officers: Daniel Di Sisto, President; Ann Marie Di Sisto, Secretary.

Dated: November 14, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–30404 Filed 11–18–97; 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. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 4, 1997.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Leo A. and Louis A. Altier, both of Corning, Ohio; William H. Altier, Zanesville, Ohio; John F. Altier, Crooksville, Ohio; Paul W. Altier, Corning, Ohio; Christina M. Altier, Columbus, Ohio; Mary Ann Flowers, Lancaster, Ohio; Pamela R. Compston, New Lexington, Ohio; Donald M. Altier, Somerset, Ohio; and Angela L. Hopkins, Cedar Hill, Texas; to retain voting shares of The Bank of Corning Company, Corning, Ohio.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Jack C. Vanderburg, Scot A. Renick, and Philip B. Davis, all of Dalhart, Texas, acting in concert; to retain voting shares of First Dalhart Bancshares, Inc., Dalhart, Texas, and thereby indirectly retain First National Bank in Dalhart, Dalhart, Texas.

Board of Governors of the Federal Reserve System, November 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30375 Filed 11–18–97; 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. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 12, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Koss-Winn Bancshares, Inc. Employee Stock Ownership Plan with 401(k) Provisions, Buffalo Center, Iowa; to become a bank holding company by acquiring 30.09 percent of the voting shares of Koss-Winn Bancshares, Inc., Buffalo Center, Iowa, and thereby indirectly acquire Farmers Trust and Savings Bank, Buffalo Center, Iowa.

2. RW Bancorp., Ltd., Reeseville, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Reeseville, Reeseville, Wisconsin.

B. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Community West Bancshares, Goleta, California; to become a bank holding company by acquiring 100 percent of the voting shares of Goleta National Bank, Goleta, California.

Board of Governors of the Federal Reserve System, November 13, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30280 Filed 11–18–97; 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. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 15, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Compass Bancshares, Inc., and Compass Banks of Texas, Inc., both of Birmingham, Alabama, and Compass Bancorporation of Texas, Inc., Wilmington, Delaware; to merge with Fidelity Resources Company, University Park, Texas, and Fidelity Resources Company of Delaware, Wilmington, Delaware, and thereby indirectly acquire Fidelity Bank, National Association, University Park, Texas.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Richmond Mutual Bancorporation, Inc., and First Mutual of Richmond, Inc., both of Richmond, Indiana; to become bank holding companies by acquiring 100 percent of the voting shares of First Bank of Richmond, Richmond, Indiana.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Sundance Bankshares, Inc., Sundance, Wyoming; to become a bank holding company by acquiring 100 percent of the voting shares of Sundance State Bank, Sundance, Wyoming.

D. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Eggemeyer Advisory Corp., and Castle Creek Capital LLC, Castle Creek Capital Partners Fund - I, LP, all of La Jolla, California; to acquire up to 24.9 percent of the voting shares of Regency Bancorp, Fresno, California, and thereby indirectly acquire Regency Bank, Fresno, California.

In connection with this application, Applicants have also applied to acquire Regency Investment Advisors, Fresno, California, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y.

2. InterWest Bancorp, Inc., Oak Harbor, Washington; to merge with Puget Sound Bancorp, Inc., Port Orchard, Washington, and thereby indirectly acquire First National Bank of Port Orchard, Port Orchard, Washington.

Board of Governors of the Federal Reserve System, November 14, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30374 Filed 11–18–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97C–0466]

Archer Daniels Midland Co.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Archer Daniels Midland Co. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of astaxanthin from *Phaffia rhodozyma* as a color additive in salmonid fish feeds.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 8C0252) has been filed by Archer Daniels Midland Co., P.O. Box 1470, Decatur, IL 62525. The petition proposes to amend the color additive regulations to provide for the safe use of astaxanthin from *P. rhodozyma* as a color additive in salmonid fish feeds.

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: October 31, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–30336 Filed 11–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0467]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: NOTICE.

SUMMARY: The Food and Drug Administration (FDA) is announcing

that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of benzenesulfonic acid, 4-chloro–5-methyl–2-[[4,5-dihydro–3-methyl–5-oxo–1–(3-sulfophenyl)–1H-pyrazo–4-yl]azo], ammonium salt (C.I. Pigment Yellow 191:1) as a colorant in polymers intended for use in contact with food.

DATES: Written comments on petitioner's environmental assessment by December 19, 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: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4566) has been filed by Ciba Specialty Chemicals Corp., 335 Water St., Newport, DE 19804. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of benzenesulfonic acid, 4-chloro–5-methyl–2-[[4,5-dihydro–3-methyl–5-oxo–1–(3-sulfophenyl)–1H-pyrazo–4-yl]azo], ammonium salt (C.I. Pigment Yellow 191:1) as a colorant in polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: November 3, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97-30406 Filed 11–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0460]

Ventritex, Inc.; Premarket Approval of the TVL® Lead 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 Ventritex, Inc., Sunnyvale, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the TVL® Lead System. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 10, 1996, of the approval of the application.

DATES: Petitions for administrative review by December 19, 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: Doris J. Terry, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609.

SUPPLEMENTARY INFORMATION: On June 30, 1995, Ventritex, Inc., Sunnyvale, CA 94086–6527, submitted to CDRH an application for premarket approval of the TVL® Lead System. The TVL® Lead System is indicated for use with commercially available pulse generators with which it has been tested. The TVL® Lead System is a transvenous defibrillation lead system and is indicated for use in patients with a history of hemodynamically compromising ventricular tachyarrhythmias. These patients may have experienced a cardiac arrest not associated with an acute myocardial infarction or have ventricular tacharrhythmias. In addition, the TVL® Lead System can be used in patients whose primary therapy for hemodynamically significant, sustained ventricular tachycardia is antitachycardia pacing; the defibrillation capabilities of the connected pulse generator provide therapy backup in the event that the arrhythmia accelerates.

In accordance with the provisions of section 515(c)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Circulatory System Devices Advisory 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 May 10, 1996, 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 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 December 19, 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: October 16, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–30333 Filed 11–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Document Identifier: HCFA–R–94

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicaid Sterilization Regulations 45 CFR 96.73, 42 CFR 441 subpart F and Consent Form; *Form No.:* HCFA–R–94 OMB 0938–0481; *Use:* All Medicaid-eligible individuals seeking sterilization are required to sign the federally mandated consent form, acknowledging that they understand the benefits and risks of sterilization, and have received oral information concerning the sterilization operation from the provider. *Frequency:* Other (each time sterilization is sought); *Affected Public:* Individuals or Households; *Number of Respondents:* 112,526; *Total Annual Responses:* 112,526; *Total Annual Hours:* 140,658.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 6, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services,Information Technology Investment Management Group,Division of HCFA Enterprise Standards.

[FR Doc. 97–30368 Filed 11–18–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–200]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Revision of a currently approved collection; *Title of Information Collection:* HEDIS 3.0 (Health Plan Data and Information Set), including the Health of Seniors and Consumer Assessment of Health Plans Study (CAHPS) surveys and supporting regulations 42 CFR 417.470, and 42 CFR 417.126; *Form Number:* HCFA–R–200 (OMB #0938–0701); Use: HEDIS and CAHPS will be used for 3 purposes: (1) To provide summary comparative data to the Medicare beneficiary to assist them in choosing among health plans; (2) to provide information to health plans for internal quality improvement activity; and (3) to provide HCFA, as purchaser, information useful for monitoring quality of and access to care provided by the plans; *Frequency:* Annually; *Affected Public:* Individuals or Households, non-profit and for profit HMOs which contract with HCFA to provide managed health care to Medicare beneficiaries; *Number of Respondents:* 293,834; *Total Annual Responses:* 293,834; *Total Annual Hours Requested:* 181,520.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 21, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–30369 Filed 11–18–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Drug Accountability Record; Submission of OMB Review; Comment Request

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 10, 1997, page 37069 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30-days for public comment. The National Institutes

of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: *Title:* Drug Accountability Record (NIH form 2564) and Transfer Investigational Drug Record (NIH form 2564–1). *Type of Information Collection Request:* Revision of a currently approved collection, OMB No. 0925–0240, Expiration Date 1/31/98. *Need and Use of Information Collection:* Food and Drug Administration (FDA) regulations require investigators to establish a record of the receipt, use and disposition of all investigational agents. The National Cancer Institute, NCI, as a sponsor of investigational drug trails, has the responsibility to assure the FDA that investigators in its clinical trials program are maintaining systems for drug accountability. In order to fulfill these requirements, a standard Investigational Drug Accountability Report Form (NIH 2564) was designed to account for drug inventories and usage by protocols. The Transfer Investigational Drug Form (NIH 2564–1) permits intra-institutional transfer of drugs to other approved investigators for other approved protocols. The data obtained from the drug accountability record will be used to keep track of the dispensing of investigational anticancer agents to patients. It is used by NCI management to ensure that investigational drug supplies are not diverted for inappropriate protocol or patient use. The information is also compared to patient flow sheets (protocol reporting forms) during site visits conducted for each investigator once every three years. All comparison are done with the intention of ensuring protocol, patient and drug compliance for patient safety and protections. *Frequency of Response:* Daily. *Affected Public:* state or local governments, businesses, or other for-profit, Federal agencies or employees, non-profit institutions, and small business or organizations. *Type of Respondents:* Investigators, pharmacist; nurses, pharmacy technicians, data managers. The annual reporting burden is as follows: The annualized burden estimate for record keeping is estimated to require 3,650 hours for drug accountability and 120 hours for drug transfer. The annualized cost to the respondents is estimated at $94,500. The reporting burden is the average time (4 minutes or 0.0666 hour) required to complete the transfer investigational drug form multiplied by the number of forms completed annually. The record keeping burden represents an average time required for multiple entries (4 minutes or 0.0666 hour per entry) on the drug accountability form, the average number of forms maintained by each record keeper and the number of record keepers. These estimates are based on the 36,500 items shipped by PMB and the 1,200 items transfer approvals in calendar year 1996. Cost estimates are based upon burden hours at an average cost of $25.00 per hour.

Drug Accountability Form:
No. Of Respondents—4560
No. Of responses per respondent—8
Average Burden per response—0.0666
Annual Burden hours—2430

Drug Transfer Form:
No. Of respondents—1200
No. Of responses per respondent—1
Average burden per response—0.0666
Annual Burden hours—80

Total Annualized Burden For Record Keeping and Reporting: 2,510.

There are no Capital Costs, Operating Costs, and/or Maintenance Cost to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments To OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Joseph High, Head, Drug Management and Authorization Section, Pharmaceutical Management Branch, Cancer Therapy Evaluation Program, Division Cancer Therapy, Diagnosis, and Centers, National Cancer Institute, Executive Plaza North, Room 707, 9000 Rockville Pike, Bethesda, MD 20892 or call non-toll-free number (301) 496–5725 or E-mail your request, including your address to: JoeHigh@nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before December 19, 1997.

Dated: November 12, 1997.

Nancie L. Bliss,

OMB Project Clearance Liaison.

[FR Doc. 97–30322 Filed 11–18–97; 8:45 am]

BILLING CODE 4140–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, December 5, 1997, in Building 31, Room 2A52.

This meeting will be open to the public from 8:00 a.m. to 12 noon on December 5 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on December 5 from 1:00 p.m. to adjournment of the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Ms. Catherine O'Connor, Senior Biomedical Research Program Assistant, NICHD, Building 31, Room 2A50, National Institutes of Health, Bethesda, Maryland, 20892–2425, 301–496–2133, will provide a summary of the meeting, a roster of Board members, and substantive program information upon request. Individuals who plan to attend

the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. O'Connor in advance of the meeting.

Dated: November 12, 1997.

LaVeen Ponds,

Acting, Committee Management Officer, NIH.

[FR Doc. 97–30322 Filed 11–18–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–08–1110–00; 6780; 1782]

Arizona: Availability of the Final Lechuguilla-Mohawk Habitat Management Plan (HMP), Yuma Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the final Lechuguilla-Mohawk Habitat Management Plan (HMP) and environmental assessment, Yuma Field Office.

SUMMARY: The Lechuguilla-Mohawk Habitat Management Plan covers wildlife habitat improvement projects and monitoring on approximately 930,000 acres of public land and military-withdrawn public land in southwestern Arizona. The plan will be implemented in cooperation with Arizona Game and Fish Department under the Sikes Act. Most of the land included in the plan is part of the Barry M. Goldwater Air Force Range which is administered by the Luke Air Force Base in Glendale, Arizona. The western portion of the Goldwater Range is used primarily by the Marine Corps Air Station, Yuma for training.

Objectives of the plan include maintenance and enhancement of habitat for Sonoran pronghorn, desert tortoise, flat-tailed horned lizard, mule deer, desert bighorn sheep, upland game, nongame, and other sensitive wildlife habitat. It is projected that the plan objectives will be achieved within 20 years.

ADDRESSES: A limited number of copies of the Plan and Environmental Assessment are available upon request to: Field Manager, Bureau of Land Management, 2555 East Gila Ridge Road, Yuma, Arizona 85365. There are also copies available for review at the above location.

FOR FURTHER INFORMATION CONTACT: Wildlife Biologist Susanna Henry, Bureau of Land Management, 2555 East Gila Ridge Road, Yuma, Arizona 85365, telephone (520) 317–3211.

Dated: November 10, 1997.

Curtis Gunn,

Program Manager, Resources, Lands, and Minerals/Acting Field Manager.

[FR Doc. 97–30299 Filed 11–18–97; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–1020–001]

Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting, Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council Meeting Locations and Times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council (RAC) will be held as indicated below. The agenda includes a public comment period, and discussion of public land issues.

The Resource Advisory Council develops recommendations for BLM regarding the preparation, amendment, and implementation of land use plans for the public lands and resources within the jurisdiction of the council. For the Mojave-Great Basin RAC this jurisdiction is Clark, Esmeralda, Lincoln and Nye counties in Nevada. Except for the purposes of long-range planning and the establishment of resource management priorities, the RAC shall not provide advice on the allocation and expenditure of Federal funds, or on personnel issues.

The RAC may develop recommendation for implementation of ecosystem management concepts, principles and programs, and assist the BLM to establish landscape goals and objectives.

All meetings are open to the public. The public may present written comments to the council. Public comments should be limited to issues for which the RAC may make recommendations within its area of jurisdiction. Depending of the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Michael Dwyer at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NV 89108, telephone, (702) 647–5000.

DATES: Date is December 8, 1997, from 1:00 p.m. to approximately 4 p.m. and will reconvene on December 9, 1997 and meet from 8 a.m. to 4:40 p.m. The public comment period will begin at 2 p.m. on December 8, 1997 at 2:00 p.m.

ADDRESSES: The council will meet at the Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, NV.

FOR FURTHER INFORMATION CONTACT: Dan Netcher, District Minerals Specialist, Ely, telephone: (702) 289–1872.

Dated: November 10, 1997.

Gene A. Kolkman,

Ely District Manager.

[FR Doc. 97–30300 Filed 11–18–97; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00] ES–49231, Group 34, Illinois

Notice of Filing of Plat of Survey; Illinois

The plat of the survey of the Kaskaskia Lock and Dam acquisition boundary, Township 6 South, Range 8 West, Third Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on December 22, 1997.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., December 22, 1997.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: November 7, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–30298 Filed 11–18–97; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issued including: consideration and discussion of preliminary draft alternatives being developed for the programmatic EIS/EIR, a report on the findings and recommendations of the Ecosystem Restoration Program Plan Scientific Review Panel, reports from the BDAC Work Groups, and other policy issues pertaining to the CALFED Bay-Delta Program. Interested persons may make oral statements to the BDAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 9:30 am to 5:00 pm on Friday, December 12, 1997.

ADDRESSES: The Bay-Delta Advisory Council meeting will meet at the Radison Hotel, 500 Leisure Lane, Sacramento, California 95815, (916) 922–2020.

CONTACT PERSON FOR MORE INFORMATION: Mary Selkirk, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The CALFED Bay-Delta Program is exploring and developing a long-term solution for cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed and objectives for the CALFED Bay-Delta Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff.

Minutes of the meeting will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: November 13, 1997.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 97–30327 Filed 11–18–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for the exemption of coal extraction incidental to the extraction of other minerals at 30 CFR part 702.

DATES: Comments on the proposed information collection must be received by January 20, 1998, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240. Comments may also be submitted electronically to jtrelease@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR 702, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Exemption for Coal Extraction Incidental to the Extraction of Other Minerals, 30 CFR part 702.

OMB Control Number: 1029–0089.

Summary: This part implements the requirement in Section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which grants an exemption from the requirements of SMCRA to operators extracting not more than 16⅔ percentage tonnage of coal incidental to

the extraction of other minerals. This information will be used by the regulatory authorities to make that determination.

Bureau Form Number: None.

Frequency of Collection: Once and annually thereafter.

Description of Respondents: Producers of coal and other minerals.

Total Annual Responses: 78.

Total Annual Burden Hours: 733.

Dated: November 12, 1997.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 97–30305 Filed 11–18–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA Number 170N]

Task Force on Suspicious Orders

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of establishment of Task Force on Suspicious Orders.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2 (1972), and 41 CFR 101–6.1001–6.1035 (1992), the Administrator of the Drug Enforcement Administration (DEA), with the concurrence of the Attorney General, is establishing a Task Force on Suspicious Orders for the purpose of developing proposals to define suspicious orders of listed chemicals which can be used by registrants in determining if an order is a suspicious order which must be reported to the DEA.

The Task Force is authorized by Public Law 104–237, Section 504 of Subtitle V, Education and Research, the Comprehensive Methamphetamine Control Act of 1996 (the MCA). The specific provisions of the Act state that:

The Task Force shall be responsible for providing the Attorney General with recommendations, advice, and proposals for the establishment of such guidelines that will adequately define suspicious orders of listed chemicals. The Task Force shall limit its area of consideration to domestic issues regarding suspicious orders.

DATES: This Task Force is effective September 3, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Leser, Program Analyst, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–4026 or Facsimile (202) 307–8570.

SUPPLEMENTARY INFORMATION:

Scope: Regulated persons are required to report suspicious regulated transactions to DEA pursuant to 21 CFR 1310.05(a)(1) and 21 U.S.C. 830(b)(1)(A). In the past, DEA has had general guidelines which were published in the Chemical Handlers' Manual as to what constituted a suspicious chemical order. The Comprehensive Methamphetamine Control Act of 1996 (MCA) mandated the establishment of the Suspicious Orders Task Force with the express purpose of developing proposals that further define a suspicious order. The scope of discussion of this Task Force shall be limited to enhancements and clarifications of what constitutes a suspicious chemical order that needs to be reported to DEA.

Membership: In accordance with the provisions of the MCA, this Task Force will be composed of appropriate personnel with experience in investigating and prosecuting illegal transactions of listed chemicals and supplies, and representatives from the chemical and pharmaceutical industries.

The Task Force will consist of 20 members nominated by the chairman of the Task Force from relevant industry/trade associations and state and local law enforcement agencies. The composition of the Task Force shall be:

Two members from the DEA investigative workforce
One member from the U.S. Attorney's Office, Southern District of California
One member from the International Association of Chiefs of Police
One member from The National Association of Diversion Investigators
One member from the California Bureau of Narcotics Enforcement
One member from the Missouri State Highway Patrol
One member from the Missouri Attorney General's Office
One member from the National Association of Boards of Pharmacy
One member from the National Association of State Controlled Substances Authorities
Two members from the Chemical Manufacturers Association
Two members from the National Association of Chemical Distributors
One member from the national Non-Prescription Drug Manufacturers' Association
Four members from the wholesale and retail pharmaceutical marketing associations

The chairman of the Task Force shall reserve the right to add up to two additional members to the Task Force as appropriate.

In accordance with the Federal Advisory Committee Act, all meetings of the Task Force shall be open to the public with notice of times and locations appearing in the **Federal Register**. Interested parties shall be permitted to attend meetings, appear before the Task Force and present limited verbal statements, and file written statements with Task Force members. Written statements will be taken at any time during the meeting and distributed to the Task Force as soon as feasible. Presenters of written statements are requested to provide 25 copies of the statement to expedite distribution to the Task Force members. If the presenter does not/can not provide the requested copies, the Designated Federal Official (DFO) will make the copies and the Task Force will consider the statement when the copies are available. Verbal comments may be limited in time by the DFO to insure adequate opportunity for testimony by as many presenters as possible.

The Task Force will be advisory only and will provide its report to the Attorney General.

Dated: November 10, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 97–30275 Filed 11–18–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA NUMBER 171N]

Task Force on Suspicious Orders Meeting

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Suspicious Orders Task Force will be held on December 16–17, 1997. The panel will meet from 9:00 a.m. to 5:00 p.m. both days at The Marriot Residence Inn, 550 Army Navy Drive, Arlington, Virginia 22202.

This meeting will be open to the public on a space available basis. Any interested person may observe meetings or portions thereof and shall be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Designated Federal Official (DFO) in attendance.

In addition to presenting limited verbal statements, interested parties shall be permitted to file written statements with Task Force members. Written statements will be taken at any time during the meeting and distributed to the Task Force as soon as feasible. Presenters of written statements are requested to provide 25 copies of the statement to expedite distribution to the Task Force members. If the presenter does not/can not provide the requested copies, the DFO will make the copies and the Task Force will consider the statement when the copies are available. Verbal comments may be limited in time by the DFO to insure adequate opportunity for testimony by as many presenters as possible.

DATES: December 16, 17, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Leser, Program Analyst, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, 20537, Telephone (202) 307–4026, Facsimile (202) 307–8570.

SUPPLEMENTARY INFORMATION: If you need special accommodations due to a disability, please contact the Office of Diversion Control, Drug Enforcement Administration, 600 Army Navy Drive, Arlington, Virginia, 22202, (202) 307–4026 at least seven (7) days prior to the meeting.

Dated: November 10, 1997.

John H. King,

Deputy Assistant Administrator Office of Diversion Control.

[FR Doc. 97–30276 Filed 11–18–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Revision of Existing Collection; Generic Clearance of Customer Service Surveys.

On September 2, 1997, the Immigration and Naturalization Service (Service) published a notice in the **Federal Register** at 62 FR 46375, revising Generic Clearance of Customer Service Surveys. On page 46376, first column, first paragraph, last sentence, the Service encouraged public comments from November 3, 1997. That sentence should have read ''Comments are encouraged and will be accepted for ''sixty days *until* November 3, 1997.''

Office of Management and Budget approval is being south for the information collection listed below. This proposed collection was previously published in the **Federal Register** on September 2, 1997, at 62 FR 46375. No comments were received by the Immigration and Naturalization Service.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 19, 1997. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of currently approved information collection.

(2) *Title of the Form/Collection:* Generic Clearance of Customer Service Surveys.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No agency form number. Office of Policy and Planning, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. This information will be used to assess individual and agency needs, identify problems, and plan for programmatic improvements in the delivery of immigration services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 150,000 responses at 30 minutes (.5) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments may be submitted to INS via facsimile to (202) 305–0143.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 13, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–30302 Filed 11–18–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Standards for the Registration of Apprenticeship Programs—Equal Employment Opportunity in Apprenticeship and Training; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection

requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision of the collection of the information regarding registered apprenticeship programs under Title 29 CFR part 29 (Labor Standards for the Registration of Apprenticeship Programs) and the extension of the collection of the information under CFR part 30 (Equal Employment Opportunity in Apprenticeship and Training).

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 20, 1998.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Anthony Swoope, Director, Bureau of Apprenticeship and Training, 200 Constitution Ave., N.W., Room 4649, Washington, DC 20210; E-mail Internet address: Swoope@doleta.gov; Telephone number: (202) 219–5921 (this is not a toll-free number); Fax number: (202)219–5011(this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The National Apprenticeship Act of 1937 authorizes and directs the Secretary of Labor ''to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Office of Education under the Department of Health, Education, and Welfare * * *. ''Section 2 of the Act authorizes the Secretary of Labor to ''publish information relating to existing and proposed labor standards of apprenticeship,'' and to ''appoint national advisory committees * * *.'' (29 U.S.C. 50a).

Title 29 CFR part 29 sets forth labor standards to safeguard the welfare of apprentices, and to extend the application of such standards by prescribing policies and procedures concerning registration, for certain Federal purposes, of acceptable apprenticeship programs with the U.S Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. These labor standards, policies and procedures cover the registration, cancellation, and deregistration of apprenticeship programs and of apprenticeship agreements; the recognition of a State agency as the appropriate agency for registering local apprenticeship programs for certain Federal purposes; and matters relating thereto.

Title 29 CFR part 30 sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and recognized State apprenticeship agencies. These policies and procedures apply to recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship. The procedures provide for review of apprenticeship programs, for registering apprenticeship programs, for processing complaints, and for deregistering noncomplying apprenticeship programs. This part also provides policies and procedures for continuation or withdrawal of recognition of State agencies which register apprenticeship programs for Federal purposes.

II. Current Actions

Recordkeeping and data collection activities regarding registered apprenticeship are by-products of the registration system. Organizations which apply for apprenticeship sponsorship enter into an agreement with the Federal Government or cognizant State government to operate their proposed programs consistent with 29 CFR parts 29 and 30. Apprenticeship sponsors are not required to file reports regarding their apprentices other than individual registration and update information as an apprentice moves through their program. As requested by the Office of Management and Budget, a revision is being made to the Apprenticeship Agreement Form, ETA 671, to include a statement regarding the voluntary disclosure of the social security number by the apprentice. Also, as requested by the Solicitor's Office of the U.S. Department of Labor, another revision to the form includes a statement informing the apprentice that the information contained on the Apprenticeship Agreement Form, is included in the Apprenticeship Management System. The information on this form is protected in accordance with the Privacy Act.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Title 29 CFR part 29, Labor Standards for the Registration of Apprenticeship Programs.

OMB Number: 1205–0223 for 29 CFR part 29.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Title 29 CFR part 30, Equal Employment Opportunity in Apprenticeship and Training.

OMB Number: 1205–0224 for 29 CFR part 30.

Recordkeeping: Apprenticeship sponsors are required to keep accurate records on the qualifications of each applicant pertaining to determination of compliance with these regulations. Records must be retained, where appropriate, regarding affirmative action plans and evidence that qualification standards have been validated. State Apprenticeship Councils are also obligated to keep adequate records pertaining to determination of compliance with these regulations. All of the above records are required to be maintained for five years. If this information was not required, there would be no documentation that the apprenticeship programs were being operated in a nondiscriminatory manner. Many apprenticeship programs are 4 years or more in duration; therefore, it is important to maintain the records for at least 5 years.

Section	Total respondents	Frequency	Total responses	Average time per response	Burden
Summary of Burden for 29 CFR Part 29					
Sec. 29.3	94,041	1-time	94,041	¼ hour	23,510
Sec. 29.6	62,940	1-time	62,940	1/12 hour	5,245
Sec. 29.5	1,906	1-time	3,600	2 hours	3,812
Sec. 29.7	40	1-time	40	1/12 hour	3
Sec. 29.12	30	1-time	30	2 hours	60
Sec. 29.13					
Total			160,651		32,630
Summary of Burden for 30 CFR Part 29					
Sec. 30.3	1,024	1-time	1,024	½ hour	512
Sec. 30.4	247	1-time	247	1 hour	247
Sec. 30.5	3,662	1-time/applicant	3,662	½ hour	1,1834
Sec. 30.6	50	1-time	50	5 hours	250
Sec. 30.8	35,848	1-time	35,848	1 minute	597
Sec. 30.8	30	1-time/program	17,924	5 minutes	1,494
Sec. 30.11	35,848	1-time	35,848	Hand-out	
ETA 9039	50	1-time	50	½ hour	25
Sec. 30.15	30	1-time	(1)		
Sec. 30.19	30	varies			
Total			94,653		4,959

[1] Completed.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 14, 1997.

Anthony Swoope,

Director, Bureau of Apprenticeship and Training.

[FR Doc. 97–30360 Filed 11–18–97; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–162)]

Notice of Prospect Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Mr. Richard Hular, doing business as Fast Track Management Consulting, of San Carlos, CA 94070, has applied for a partially exclusive patent license to practice the invention described and claimed in NASA Case No. ARC 14172–ICU, entitled ''ROBOTICS SYSTEM WITH MULTIMODALITY INSTRUMENT FOR TISSUE IDENTIFICATION,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Ames Research Center.

DATES: Responses to this notice must be received by January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Warsh, Patent Attorney, NASA Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035, telephone (650) 604–5104.

Dated: November 12, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–30373 Filed 11–18–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before December 19, 1997 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Maya Bernstein, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection(s) and supporting statement(s) should be directed to Diana Bentley at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published notices of proposed collections for these information collections on August 5 (62 FR 42144) and September 3, 1997 (62 FR 46514 and 46515). There were no comments received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed information collection(s) is/are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate(s) of the burden(s) of the proposed information collection(s); (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden(s) of the collection(s) of

information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Customer Comment Form.
OMB number: 3095–0007.
Agency form number: NA Form 14045.
Type of review: Regular.
Affected public: Individuals.
Estimated number of respondents: 3,200.
Estimated time per response: 5 minutes.
Frequency of response: On occasion.
Estimated total annual burden hours: 267 hours.
Abstract: The information collection is a customer comment form made available to persons who use NARA services or visit NARA museums. The form is voluntary and is used to record comments, complaints, and suggestions from NARA customers. NARA uses the information to correct problems and improve service.

2. *Title:* National Historical Publications and Records Commission (NHPRC) Subvention Grant Guidelines and Application.
OMB number: 3095–0021.
Agency form number: N/A.
Type of review: Regular.
Affected public: Universities and non-profit presses.
Estimated number of respondents: 18.
Estimated time per response: 3.75 hours.
Frequency of response: On occasion. On the average, nonprofit presses submit two subvention grant applications per year.
Estimated total annual burden hours: 135 hours.
Abstract: The information collection is prescribed by 36 CFR 1206. The application is submitted by university and other non-profit presses applying to the NHPRC grant program for subvention of part of the costs of manufacturing and distributing volumes published by NHPRC-supported editorial projects.

3. *Title:* NHPRC Annual Sales Report for Subvention Grants.
OMB number: 3095–0022.
Agency form number: None.
Type of review: Regular.
Affected public: Non-profit presses that have received an NHPRC subvention grant.
Estimated number of respondents: 18.
Estimated time per response: 1 hour.
Frequency of response: One time only. On the average, nonprofit presses have two on-going subvention grants and therefore would submit two sales reports per year.
Estimated total annual burden hours: 36 hours.
Abstract: The information collection is prescribed by 36 CFR 1206. The sales information provided by non-profit presses is used by NHPRC to gauge interest among scholars and the general public in documentary editions supported by NHPRC grants.

Dated: November 10, 1997.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 97–30282 Filed 11–18–97; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Information Collections Under Review

DATES: November 19, 1997.

The National Credit Union Administration (NCUA) intends to submit the following new public information collection requests to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public. Public comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the **Federal Register**.

Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Betty May, (703–518–6414). Comments and/or suggestions regarding the information collection requests should be directed to Mrs. May at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. 703–518–6433; e-mail address: bettym@ncua.gov within 60 days from the date of this publication in the **Federal Register**.

National Credit Union Administration

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Year 2000 Quarterly Credit Union Report.
Description: To obtain information to track credit unions' progress toward ''Year 2000'' compliance in order to ensure the safety and soundness of individual credit unions and the industry and to provide specifically required monitoring reports to respond to ongoing congressional and other inquiries.
Respondents: Federal and State Credit Unions.
Estimated No. of Respondents/ Recordkeepers: 11,335.
Estimated Burden Hours Per Response: 3.5.
Frequency of Response: Quarterly.
Estimated Total Annual Burden Hours: 39,673.
Estimated Total Annual Cost: N/A.

OMB Number: New.
Form Number: None.
Type of Review: New.
Title: Survey—Sampled Credit Unions.
Description: National Credit Union Administration is considering policy changes that may allow more than one credit union to serve the same group of potential members. As part of the consideration, NCUA is concerned with the potential impact of those changes on credit unions. The proposed survey will gather information to be used in the policy writing process.
Respondents: Federal and State Credit Unions.
Estimated No. of Respondents/ Recordkeepers: 1,137.
Estimated Burden Hours Per Response: .5.
Frequency of Response: On occasion.
Estimated Total Annual Burden Hours: 1,137.
Estimated Total Annual Cost: N/A.

OMB Number: New.
Form Number: None.
Type of Review: New.
Title: Survey—Selected Overlapped Credit Unions.
Description: National Credit Union Administration is considering policy changes that may allow more than one credit union to serve the same group of potential members. As part of the consideration, NCUA is concerned with the potential financial impact. The proposed survey will gather information from credit unions with actual experience in this area.
Respondents: Federal and State Credit Unions.
Estimated No. of Respondents/ Recordkeepers: 200.
Estimated Burden Hours Per Response: .5.
Frequency of Response: On occasion.
Estimated Total Annual Burden Hours: 100.
Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on November 10, 1997.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–30325 Filed 11–18–97; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemistry; 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 and Committee Code: Special Emphasis Panel in Chemistry (#1191).

Date and Time: December 11–12, 1997.

Place: Rooms, 360, and 370, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. George Rubottom, Program Director, Organic and Macromolecular Chemistry, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1851.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for Sites for Research Experiences for Undergraduates in Chemistry as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 14, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–30365 Filed 11–18–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; 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: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: December 8, 9, and 10, 1997, 8:00 a.m.–5:30 p.m.

Place: Rooms 330, 340, 365, 390, 530, 580, 630, 680, and 920, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Delcie Durham, Program Director, Materials Processing and Manufacturing Program, Dr. George Hazelrigg, Program Director, Design and Integration Program, Dr. Ming Leu, Program Director, Manufacturing Machines and Equipment Program, Dr. Lawrence Seiford, Program Director, Operations Research and Production Systems, (703) 306–1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 14, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–30364 Filed 11–18–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; 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: Special Emphasis Panel in Geosciences (1756).

Date and Time: December 19, 1997; 8:30 a.m.–5:00 p.m.

Place: Room #770, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Michael Mayhew, Program Director, Education and Human Resources Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1557.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate REU-Sites Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 14, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–30362 Filed 11–18–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical 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 and Committee Code: Special Emphasis in Mathematical Sciences (1204).

Date and Time: December 4–6, 1997; 8:30 a.m. until 5:00 p.m.

Place: Room 1020, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mr. Lloyd Douglas, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1874.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning REU Sites as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal informaiton concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 14, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–30361 Filed 11–18–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical 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 and Committee Code: Special Emphasis in Mathematical Sciences (1204).

Date and Time: December 15–17, 1997; 8:30 a.m. until 5:00 p.m.

Place: Rooms 310, 320 & 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Drs. Keith N. Crank, James Gentle, James Davenport, and Javier Rojo Program Directors, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice to Program Officers concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Statistics and Probability Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated associated with the proposals. These matters are exempt under 5 U.S.C. 552(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 14, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–30363 Filed 11–18–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Gulf States, Inc. and Cajun Electric Power Cooperative, Inc.; River Bend Station, Unit No. 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an order approving, under 10 CFR 50.80, the transfer of Facility Operating License No. NPF–47, to the extent now held by Cajun Electric Power Cooperative, Inc. (Cajun), to Entergy Gulf States, Inc. (EGSI, the licensee) with respect to the River Bend Station, Unit No. 1 (RBS), located in West Feliciana Parish, Louisiana, and issuance of a conforming amendment under 10 CFR 50.90.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent, by the issuance of an order, to the transfer of the 30% minority ownership interest in the facilities for RBS from Cajun to EGSI and approve the issuance of a conforming amendment to the license.

The proposed action is in accordance with the application, endorsed and consented to by EGSI, dated October 15, 1997, filed by Ralph R. Mabey, Trustee for Cajun.

The Need for the Proposed Action

The proposed action is required to obtain the necessary consent to the transfer of the license, to the extent now held by Cajun, and approval of the amendment discussed above. Cajun is a minority owner of RBS with an ownership share of 30%. In 1994, after a two-year rate investigation, the Louisiana Public Service Commission disallowed from rate recovery Cajun's $1.8 billion investment in River Bend. This action precipitated Cajun's decision on December 21, 1994, to file a voluntary petition with the United States Bankruptcy Court for the Middle District of Louisiana (the ''Bankruptcy Court'') for protection under Chapter 11 of the Bankruptcy Code. Cajun had borrowed the majority of the $1.8 billion to invest in RBS from the Rural Utilities Service (''RUS'') of the United States Department of Agriculture. On August 26, 1996, the Bankruptcy Court approved the terms of a settlement agreement between Cajun, EGSI, and the RUS which allows the Trustee to seek authority to transfer Cajun's 30% undivided ownership interest in RBS. The application dated October 15, 1997, seeks consent to transfer Cajun's 30% interest to EGSI and an amendment to the license to reflect that transfer.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there will be no changes to the facility or its operation as a result of the proposed action. Accordingly, the NRC staff concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action will not affect nonradiological plant effluents and will have no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the River Bend Station, Unit No. 1.

Agencies and Persons Consulted

In accordance with its stated policy, on November 13, 1997, the staff consulted with the Louisiana State official, Mr. William Spell of the Department of Environmental Quality, Radiation Protection Division, regarding the environmental impact of the proposed action. The State official had no comments.

Finding Of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for proposed action.

For further details with respect to the proposed action, see the application dated October 15, 1997, which is 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 located at the Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Dated at Rockville, Maryland, this 13th day of November 1997.

For the Nuclear Regulatory Commission.

James W. Clifford,

Acting Director, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–30331 Filed 11–18–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Assurance of Equipment Operability and Containment Integrity During Design-Basis Accident Conditions; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter (GL) 96–06, Supplement 1 to inform all holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, about ongoing efforts and new developments associated with GL 96–06, and to provide additional guidance that addressees may find useful in planning and scheduling future actions associated with GL 96–06. This generic letter is for information

only; no specific action or written response is required. Conformance with the guidance provided in the generic letter is voluntary.

The generic letter is available in the NRC Public Document Room under accession number 9711050091.

DATES: The generic letter was issued on November 13, 1997.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Beth A. Wetzel at (301) 415–1355.

SUPPLEMENTARY INFORMATION: Addressees of GL 96–06 have experienced difficulty in determining and implementing corrective actions for resolving the issues identified in the generic letter. Additionally, questions have been raised regarding (1) the risk implications of installing relief valves to deal with the thermal overpressurization issue; (2) the use of the ASME Code, Section III, Appendix F, criteria for permanent resolution of the thermal overpressurization issue; and (3) the NRC staff's closure of Generic Safety Issue 150, ''Overpressurization of Containment Penetrations.'' Given these considerations, risk insights, and industry initiatives that are being considered or that may be proposed, addressees may require additional time to fully evaluate and resolve the GL 96–06 issues. Therefore, addressees who find it necessary to revise their corrective actions or schedular commitments for resolving GL 96–06 issues may submit a revised response to the generic letter. Nevertheless, specific corrective actions that have been defined and are clearly needed should not be delayed without suitable justification.

Dated at Rockville, Maryland, this 13th day of November 1997.

For the Nuclear Regulatory Commission.

David B. Matthews,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–30332 Filed 11–18–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of November 17, 24, December 1 and 8, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 17

Friday, November 21

11:30 a.m. Affirmation Session (Public Meeting)

A. Final Rule—Deliberate Misconduct by Unlicensed Persons (Tentative)

B. Louisiana Energy Services—Financial Qualifications Aspects of Petitions for Review of LBP–96–25 (Contact: Ken Hart, 301–415–1659)

Week of November 24—Tentative

There are no meetings the week of November 24.

Week of December 1—Tentative

There are no meetings the week of December 1.

Week of December 8—Tentative

Thursday, December 11

2:00 p.m. Briefing on Investigative Matters (Closed—Ex. 5 & 7)

3:00 p.m. Affirmation Session (Public meeting) (if needed)

Friday, December 12

9:00 a.m. Meeting with Northeast Nuclear on Millstone (Public meeting) (Contact: Bill Travers, 301–415–1200)

Note: The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: November 14, 1997.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 97–30527 Filed 11–17–97; 12:32 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 27, 1997, through November 6, 1997. The last biweekly notice was published on November 5, 1997 (62 FR 59912).

Notice Of Consideration Of Issuance Of Amendments ToFacility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 19, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, 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. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is 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 for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: October 22, 1997

Description of amendments request: The proposed amendment incorporates both steady state and transient degraded voltage setpoints into Technical Specifications, as opposed to the current single degraded voltage setpoint. The proposed changes ensure adequate terminal voltage to all safety-related equipment during steady state and transient voltage conditions. Additionally, the 4 kV voltage range required during testing of the emergency diesel generators (EDGs) will be decreased to ensure the new steady state degraded voltage relays are not actuated during testing and to ensure the 4 kV motors are operated within their voltage rating.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes revise the current degraded voltage setpoint and adds an additional steady state undervoltage requirement to Unit 1 and 2 Technical Specifications. The current degraded voltage relays will be referred to as

≥transient degraded voltage relays.'' The new settings allow for calibration tolerances, potential transformer correction factors, test equipment uncertainties, and relay drift. The nominal settings account for the above factors, plus additional margin to the analytical limit. The acceptable voltage range during EDG surveillance testing is also being decreased. The setpoint and time delay associated with the 4 kV bus loss of voltage relays is unaffected by this amendment request.

The accident analyses credit the loading of the EDGs based on loss of offsite power. The 4 kV emergency bus loss of voltage and degraded voltage relays initiate starting and loading of the emergency diesel generators (EDGs) when the preferred power source voltage is lost or drops below a predetermined value. The relays also initiate disconnection of the preferred power source from the 4 kV emergency busses. These actions ensure adequate terminal voltage to all safety-related electrical equipment required to support accident mitigation. The required voltage necessary to ensure safety-related motors are capable of starting is 75 percent of nominal rated equipment voltage. The required voltage necessary to ensure these motors continue running for extended periods is 90 percent of nominal rated equipment voltage.

The degraded (transient) voltage setpoint is being changed from 3628 [plus or minus] 25 Volts to 3710 [plus or minus] 80 Volts. Based on the most recent calculations, a minimum voltage of 3630 Volts is required to ensure at least 75 percent of the nominal voltage is available to No. 13 Charging Pump, which is the most limiting electrical load.

The new steady state degraded voltage relay setpoint will be established at 3900 [plus or minus] 80 Volts. The setpoint ensures that there is at least 90 percent of nominal voltage available to No. 13 Charging Pump. The time delay associated with this actuation is 101 [plus or minus] 3.5 seconds. The time delay provides adequate time for the voltage regulator to recover bus voltage following a voltage swing on the 500 kV system and time for the EDG voltage regulator to stabilize. The steady state degraded voltage relays will be tested in the same manner, and at the same frequency, as the loss of voltage and transient degraded voltage relays.

The required voltage range during EDG surveillance testing is being revised from 4160 [plus or minus] 420 Volts to 4160 +240, -100 Volts. The surveillance requirement verifies that the EDG voltage regulator is maintaining an acceptable voltage. The

new value ensures the 4 kV motors are operated within their rated voltage and prevents actuation of the steady state degraded voltage relay during surveillance testing.

The degraded voltage relays are not initiators in any previously evaluated accidents. Additionally, decreasing the acceptable voltage range during EDG testing does not affect the initiation of any previously analyzed accidents. Therefore, the proposed changes do not involve an increase in the probability or consequences of an accident previously analyzed.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The license amendment request revises the current degraded voltage setpoint and adds an additional steady state degraded voltage requirement. Additionally, the acceptable voltage range during EDG surveillance testing is being decreased. The proposed changes ensure adequate starting and running terminal voltage to all safety-related electrical equipment during steady state and transient degraded voltage conditions. The addition of the steady state degraded voltage relays provide an extra scheme of protection against sustained degraded voltage conditions. The facility currently relies upon degraded voltage relays to start and load the EDGs and to disconnect the preferred power source from the 4 kV emergency busses. Therefore, revising the relay setpoint, adding additional steady state degraded voltage protection, and decreasing the acceptable voltage range during EDG testing does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The safety function of the degraded voltage relays is to ensure that the preferred power source is disconnected from the 4 kV emergency busses during loss of voltage or degraded voltage conditions. The relays also ensure the EDGs are started and loaded. Ultimately, these actions ensure the minimal terminal voltage necessary to start and run all safety-related electrical equipment is maintained. The proposed changes revise the current degraded voltage setpoint and adds an additional steady state undervoltage requirement. Additionally, the acceptable voltage range during EDG surveillance testing is being decreased to ensure actuation of the steady state degraded voltage relays does not occur during

EDG testing, and to ensure the 4 kV motors are operated within their rated voltage range.

Because the proposed changes ultimately ensure adequate terminal voltage to all safety-related electrical equipment during transient and steady state undervoltage conditions, the safety function of the degraded voltage relays, as well as the margin of safety afforded by these relays is unchanged.

Therefore, the changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: S. Singh Bajwa, Director

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: October 2, 1997

Description of amendment request: The proposed amendment would address an unreviewed safety question associated with the analysis of a fuel handling accident in the Fuel Storage Building as described in Section 15.7.4, ''Design Basis Fuel Handling Accidents,'' of the H.B. Robinson Steam Electric Plant (HBR) Updated Final Safety Analysis Report (UFSAR). Carolina Power & Light Company (the licensee) determined that an assumption used in the accident analysis for depth of water above the top of irradiated fuel in the spent fuel pit was non-conservative. The accident analysis assumed a depth of 23 feet instead of the correct value of 21 feet. The licensee has submitted a revised accident analysis using the correct assumption and has proposed that the UFSAR be

changed to incorporate the results of the revised analysis.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to the UFSAR is to change assumptions associated with the evaluation of a fuel handling accident in the Fuel Storage Building. The change in assumptions is to reduce the decontamination factor associated with the removal of elemental iodine from the spent fuel pool water. Because the decontamination factor for elemental iodine is reduced, the consequences of a fuel handling accident in the Fuel Storage Building is [sic] increased. However, because the radiological consequences remain well within the exposure guideline values of 10 CFR 100, paragraph 11 (i.e., 25% or less of the values), the increase in consequences is not significant. The change in assumptions for the fuel handling accident in the Fuel Storage Building do [sic] not affect operation, maintenance, or design of equipment associated with the handling of fuel in the Fuel Storage Building, therefore, the probability of a fuel handling accident as previously evaluated is not changed.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components, changes in parameters governing normal plant operation, or methods of operation. The proposed change does not introduce a new mode of operation or changes in the method of normal plant operation. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change to the UFSAR to change the assumptions associated with a fuel handling accident in the Fuel Storage Building is to change the assumption for the decontamination factor for elemental iodine to a smaller value. The new assumption for elemental iodine decontamination factor preserves the approximate factor of 24 margin between experimental data for elemental iodine decontamination factor and the assumed value provided in NRC Safety Guide 25. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: James E. LyonsCommonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois Date of application for amendment request: September 30, 1997

Description of amendment request: This request changes the Technical Specifications (TS) by adding a new Section 3/4.12.C, ''Inservice Leak and Hydrostatic Testing Operation,'' to allow certain reactor coolant pressure tests to be performed in MODE 4 when the metallurgical characteristics of the reactor pressure vessel require the pressure testing at or approaching temperatures ≤212°F, which normally correspond with MODE 3.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below: 1) Involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

The proposed amendment represents the addition of a Special Test Exception to perform Pressure Testing Operations consistent with the requirements of Section 3.10.1 of the Improved Standard Technical Specifications (NUREG-1433). The proposed changes are consistent with the current plant safety analyses. Implementation of these changes will provide continued assurance that specified parameters associated with Pressure Testing Operations will remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

The proposed changes are based on requirements specified by Section 3.10.1 of NUREG-1433. Any such changes are consistent with the current plant safety analyses and have been determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analyses, or provide continued assurance that specified parameters associated with Pressure Testing Operations remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

The associated systems affecting Pressure Testing Operations related to this proposed amendment are not assumed in any analyses to initiate any accident sequence; therefore, the probability of any accident previously evaluated is not increased by this proposed amendment which incorporates the requirements of Section 3.10.1 of NUREG-1433. In addition, the proposed limiting conditions for operation and surveillance requirements for the proposed amendment ensure a level of equipment operability sufficient to mitigate any operational occurrences which could occur while operating under this Special Test Exception. Furthermore, any operational occurrence postulated during operation under this Special Test Exception is bounded by the Design Basis Accidents. Therefore, the proposed amendment does not increase the consequences of nay accident previously evaluated.

There is no change to the consequences of an accident previously evaluated because Pressure Testing Operations does not adversely affect either the on-site or off-site does consequences resulting from an accident. In addition, Pressure Testing Operations is not an accident initiator. As such, there is no adverse impact on the probability of accident initiators. Thus, there is no significant increase in the probability of any previously analyzed accident.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed amendment represents the conversion of current Technical Specification requirements to maintain consistency with those requirements specified in Section 3.10.1 of NUREG-1433. The proposed changes are consistent with the current plant safety analyses. These proposed changes do not involve revisions to the design of the station. In addition, the proposed limiting conditions for operation and surveillance requirements for the proposed amendment ensure a level of equipment operability sufficient to mitigate any operational occurrences which could occur while operating under the Special Test Exception. Some of the changes may involve revision in the testing of components at the station; however, these are in accordance with the current plant safety analyses. The proposed changes will not introduce new failure mechanisms beyond those already considered In the current plant safety analyses.

The associated systems that affect Pressure Testing Operations related to the proposed amendment, are not assumed in any plant safety analysis to initiate any accident sequence. In addition, the proposed surveillance requirements for any such affected systems are consistent with the requirements of Section 3.10.1 of NUREG-1433. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3) Involve a significant reduction in the margin of safety because:

ComEd proposes to revise the Technical Specifications to be consistent with those provisions specified in Section 3.10.1 of NUREG-1433. The proposed changes are consistent with the current plant safety analyses. In addition, these proposed changes do not involve revisions to the design of the station. As such, the proposed individual changes will maintain the same level of

reliability of the equipment associated with Pressure Testing Operations, assumed to operate in the plant safety analysis, or provide continued assurance that specified parameters affecting, will remain within their acceptance limits. Therefore, the proposed changes provide continued assurance of Pressure Testing Operations without adversely affecting the public health and safety and as such, will not significantly reduce existing plant safety margins.

The proposed amendment to the Technical Specifications implements present requirements, or the requirements in accordance with the guidelines set forth in Section 3.10.1 of NUREG-1433. The proposed changes have been evaluated and found to be acceptable for use at the stations based on system design, safety analysis requirements, and operational performance. Since the proposed changes are based on NRC accepted provisions that are applicable at the stations and maintain necessary levels of system or component reliability affecting Pressure Testing Operations, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidle and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: September 26, 1997

Description of amendment request: The proposed amendments would revise the Technical Specifications to (1) prohibit the simultaneous opening of the drywell and suppression chamber purge system isolation valves, (2) upgrade the ventilation filter testing program to the latest industry standards, and (3) specify that the auxiliary electric equipment room is required to be habitable during design bases accidents.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

a. Drywell and Suppression Chamber Purge System

The purpose of the drywell and suppression chamber purge system isolation valves is to mitigate the consequences of a design bases accident. Operation of these valves will have no effect on the probability of a design bases accident occurring.

The current TS 3.6.1.8 allows for the drywell and suppression chamber purge system isolation valves to be open simultaneously. In this condition, containment pressure and offsite dose during design bases accidents would be greater than previously evaluated. The proposed revision to TS 3.6.1.8 would prevent the simultaneous opening of the drywell and suppression chamber purge system isolation valves thus assuring that the consequences of design bases accidents previously evaluated are still bounding.

b. Ventilation Filter Testing Program

The SBGTS [Standby Gas Treatment System] and Control Room and AEER [Auxiliary Electric Equipment Room] Emergency Filtration Systems are designed to mitigate the radiological consequences of previously evaluated design bases accidents. Operation and testing of these systems will have no effect on the probability of a design bases accident occurring.

The proposed revisions associated with this change relocate the requirements for SBGTS and Control Room and AEER Emergency Filtration System filter testing from the current TS SRs to a new TS administrative control program. The testing requirements are being upgraded to the latest industry standards. Filter testing in accordance with the proposed program will ensure that Title 10, Code of Federal Regulations, Part 50 (10 CFR 50), Appendix A, General Design Criteria (GDC) 19 and 10 CFR 100 limits are not exceeded.

c. Other Control Room and Auxiliary Electric Equipment Room Emergency Filtration System Changes

The SBGTS and Control Room and AEER Emergency Filtration System are designed to mitigate the radiological consequences of previously evaluated design bases accidents. Operation and testing of these systems will have no effect on the probability of a design bases accident occurring.

The proposed revisions associated with this change acknowledge that the AEERs are required to be habitable during design bases accidents. This is consistent with the plant—s design bases.

d. Editorial Changes

The proposed revisions to TS 6.2.F.7 reformat the requirement to establish consistency with the remainder of TS 6.2.F. There are no technical changes being proposed.

Based upon the above, the proposed amendment will not increase the probability or consequences of any accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

a. Drywell and Suppression Chamber Purge System

No new plant equipment is being installed, and use of currently installed plant equipment is not affected by this proposed change. The proposed revision to TS 3.6.1.8 provides additional limitations on the opening of the drywell and suppression chamber purge system isolation valves.

b. Ventilation Filter Testing Program

No new plant equipment is being installed, and use of currently installed plant equipment is not affected by this proposed change. These proposed revisions will demonstrate operability of the Control Room and AEER Emergency Filtration System using the latest industry standards.

c. Other Control Room and Auxiliary Electric Equipment Room Emergency Filtration System Changes

No new plant equipment is being installed, and use of currently installed plant equipment is not affected by this proposed change. These proposed revisions will demonstrate habitability of the AEER by imposing operability requirements on the AEER recirculation filter units.

d. Editorial Changes

The proposed revisions to TS 6.2.F.7 reformat the requirement to establish consistency with the remainder of TS 6.2.F. There are no technical changes being proposed.

Based upon the above, the proposed change will not create the possibility of a new or different kind of accident or transient previously evaluated.

3) Involve a significant reduction in the margin of safety because:

a. Drywell and Suppression Chamber Purge System

The current TS 3.6.1.8 requirements are non-conservative with respect to the assumptions used when evaluating steam bypass of the suppression chamber; specifically, a maximum allowable leakage area of 0.03 square feet with the only credible leakage path was assumed to be suppression chamber vacuum breaker valve seat leakage. This proposed revision to TS 3.6.1.8 will make the TS requirements consistent with those assumptions.

b. Ventilation Filter Testing Program

These proposed revisions will ensure operability of the Control Room and Auxiliary Electric Equipment Room (AEER) Emergency Filtration system using the latest industry standards. Filter testing in accordance with the proposed program will ensure that GDC 19 and 10 CFR 100 limits are not exceeded.

c. Other Control Room and Auxiliary Electric Equipment Room Emergency Filtration System Changes

These proposed revisions will ensure operably of the control room and AEER Emergency Filtration System by demonstrating system performance with the control room and AEER recirculation filter units to ensure GDC 19 limits are not exceeded.

d. Editorial Changes

The proposed revisions to TS 6.2.F.7 reformat the requirement to establish consistency with the remainder of TS 6.2.F. There are no technical changes being proposed.

Based on the above, the proposed TS change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

*Local Public Document Room location:*Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: October 15, 1997

Description of amendment request: The proposed amendments would revise Technical Specification Table 4.3.7.5-1, Accident Monitoring Instrumentation Surveillance Requirements, by deleting a footnote that provides details concerning the calibration requirements for the drywell hydrogen concentration analyzer and monitor.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The drywell hydrogen concentration analyzer and monitors are required to be operable by TS 3/4.7.5, Accident Monitoring Instrumentation. Table 4.3.7.5-1, Accident Monitoring Instrumentation Surveillance Requirements, includes a footnote providing unnecessary details related to the calibration of this specific analyzer and monitors. The footnote provides information that was determined to put the hydrogen analyzers and monitors outside of the design basis by limiting the range of the indication to 0% to 4% hydrogen in the drywell. The calibration method is being corrected to provide the correct range of 0% to 10%, and requires this note in the TS to be changed or deleted. The footnote is proposed to be deleted from the TS, because it provides unnecessary detail.

Deletion of the footnote will not cause an increase in the probability of an accident, because this instrumentation is only for accident monitoring instrumentation and thus does not affect accident initiators or assumptions.

Deletion of the footnote will not change the consequences of an accident previously evaluated, because this detail in the TS does not change the requirement of performing a channel calibration at the specified frequency. In addition, the ability to monitor hydrogen during an accident will not be affected by deletion of the footnote.

Therefore, this change does not involve an increase in the probability or consequences of an accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

This is monitoring instrumentation only. Deletion of the footnote concerning specifics on how to calibrate this instrumentation will not affect the reliability or failure modes of the drywell hydrogen concentration analyzer and monitors. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3) Involve a significant reduction in the margin of safety because:

This is monitoring instrumentation only. Deletion of the footnote concerning specifics on how to calibrate this instrumentation will not change the requirement to perform Channel Calibrations at the frequency specified in the TS. The details of how to perform a Channel Calibration on the drywell hydrogen concentration analyzer and monitors are located in plant procedures and are in accordance with vendor recommendations. The TS requirements for redundancy of the instrumentation and the actions to be taken for inoperable instrumentation are also not affected by the deletion of this footnote.

This change to the level of information regarding this calibration is consistent with the detail for this and other instrumentation in NUREG-1434, Revision 1, Standard Technical Specifications, General Electric Plants, BWR/6.

Therefore, deletion of footnote * from TS Table 4.3.7.5-1 will not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

*Local Public Document Room location:*Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Duke Energy Corporation, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: October 6, 1997

Description of amendment request: The proposed amendments would delete all references to the steam line low pressure safety injection function.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

Answer

Probability

Accident initiators can affect the probability of a previously evaluated accident. The addition of a new device or piece of equipment to the plant may introduce a new accident initiator. No new equipment is added to the plant as a result of this change. The proposed removal of the low steam line steam pressure will involve removing the steam line pressure safety injection function. This results in a reduction in the likelihood of spurious safety injections. Spurious safety injections can result in inadvertent ECCS [emergency core cooling system] actuations. Inadvertent ECCS Actuation is a UFSAR [updated Final Safety Analysis Report] accident (UFSAR 15.5.1). Therefore, this change will result in a reduction in the probability of an accident previously evaluated.

Routine plant operating practices and conditions will not be altered by the removal of the safety injection function. Therefore, there is no operating practice or condition change that could increase the probability of occurrence of a previously evaluated accident.

There is no significant increase in the probability of an accident previously evaluated.

Consequences

Accidents previously evaluated that could be adversely affected are the steam line break and the feedwater line break. These accidents will result in secondary side depressurization with pressure reaching the current actuation setpoint. The review of these accidents found that the consequences of the previous accident analysis acceptance criteria remain satisfied. The specifics of the accident analysis is discussed below.

The steam line break accident was analyzed to demonstrate short term cooling capability. A spectrum of break sizes were evaluated to determine the limiting break size. For smaller breaks (including the limiting break size), the safety injection actuation on low pressurizer pressure occurs prior to low steam line pressure safety injection. However, for larger steam line breaks the setpoint for low steam line pressure safety injection is reached prior to low pressurizer pressure safety injection. The larger spectrum of breaks were analyzed without credit for the low steam line pressure safety injection. The results of this analysis found that there would be a slight increase in time required for safety injection to actuate. The low pressurizer safety injection would actuate in these accidents due to the cooldown and depressurization of the reactor coolant system in response to the secondary side energy removal. The Departure from

Nucleate Boiling Ratios (DNBRs) were analyzed with this time delay in safety injection. The DNBRs for these cases were found to be less limiting than those calculated for the limiting break size. Therefore, the removal of steam line low pressure safety injection does not adversely affect the DNBR, fuel failure or dose consequences of the main steam line break accident. Other acceptance criteria would not be expected to be affected by the small change in timing of the safety injection signal.

In addition, to the Chapter 15 accident analysis, the Chapter 6 containment response to mass and energy releases was evaluated without credit for steam line low pressure safety injection. The evaluation demonstrated that for steam line breaks inside of containment, the high containment pressure safety injection set point is reached prior to the pressure associated with steam line low pressure safety injection. Therefore the existing containment response evaluation is not adversely affected by the removal of the low steam pressure safety injection. This also assures that the existing environmental qualification envelope for McGuire is not affected by this change. For steam line breaks outside of containment the maximum required breaksize is 1.0 ft2, which results in transients with safety injection caused by low pressurizer pressure prior to low steam line pressure safety injection.

The feedwater line break accidents were analyzed to demonstrate long term core cooling capability. During a feedwater line break, the secondary system will depressurize if the break occurs between the main feedwater check valve and the steam generator. However, breaks are only required to occur at the terminal ends of feedwater piping (i.e., at the feedwater pump or at the steam generator). For a feedwater line break at the main feedwater pump, the main feed check valve will prevent depressurization of the steam generator. For a feedwater line break at the steam generator, a safety injection on high containment pressure will occur prior to safety injection on steam pressure. Therefore, the elimination of the steam line low pressure safety injection does not adversely impact the feedwater line break accident.

In summary, a review was conducted of all design basis accidents to identify those which result in a low steam pressure safety injection. These accidents were then evaluated to verify that the accident analysis were within acceptance criteria. This review revealed that all accident analysis results were within current analysis acceptance criteria.

Therefore, there is no significant increase in the consequences of a previously evaluated accident.

Conclusion

Elimination of the low steam line pressure safety injection results in no significant increase in the probability or consequences of an accident previously evaluated.

(OR)

2. Create the possibility of a new or different kind of accident from any accident previously evaluated[?]

Answer

There is no introduction of new equipment or operating practices that could result in a new operating condition. The plant will continue to operate in the same method with the same complement of equipment with the exception of the actuation logic associated with the steam line low pressure safety injection. Therefore, there is no new operating condition that would be expected to generate a new sequence of events which could generate a new or different accident. There is no new equipment that could interact with other plant structures, systems or components.

The low pressure safety injection equipment is the only plant equipment affected by this change. There are no new equipment failure modes which might result in a new or different accident.

Affected accidents were evaluated to validate that the accident sequence would not deviate in a fashion which would create a new or different accident. The analysis of the feedwater line break and steam line break did not reveal any new or different type of accident.

Removal of the low steam line pressure safety injection will not create the possibility of a new or different kind of accident from any accident previously evaluated;

(OR)

3. Involve a significant reduction in the margin of safety?

Answer

The margin of safety relevant to this change is represented by the margin of physical protection provided by fuel cladding and the reactor containment. Effects of this change on the safety analysis was described under question 1 above. The results of the analysis demonstrate that DNBR, fuel clad integrity and containment response were not significantly affected by the removal of low steam line pressure safety injection. Therefore, the physical protection provide[d] by the fuel cladding and reactor containment were not affected by this change. Accident acceptance criteria continued to be met without credit for the safety function. The radiological consequences of accidents was not affected by the change.

The removal of the low steam line pressure safety injection did not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: October 15, 1997

Description of amendment request: The proposed amendment would affect nominal trip setpoints and allowable values for Reactor Trip System (RTS) Instrumentation Trip Setpoints Table 2.2-1, and Engineered Safety Features Actuation System (ESFAS) Instrumentation Trip Setpoints Table 3.3-4. In addition, the proposed amendment would (1) decrease the reactor trip setpoint for the reactor coolant pump (RCP) low shaft speed (underspeed trip setpoint) from 95.8 percent to 92.4 percent of rated speed, (2) make editorial changes, and (3) change the Bases to reflect the new methodology.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10CFR50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed revision does not involve [an] SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed changes to Tables 2.2-1 and 3.3-4 involve changes from a five column format to a two column format. The RTS trip setpoints and ESFAS trip setpoints remain unchanged with the exception of the RCP low shaft speed trip setpoint discussed below. Detailed operability criteria will be moved to surveillance procedures and analysis has demonstrated that an adequate margin for normal trip setpoints exist and safety analysis limits are preserved in all RTS/ESFAS functions.

Changing the RCP low shaft speed trip setpoint will not change the probability of occurrence of the event. The existing accident analysis (Millstone Unit No. 3 FSAR [final safety analysis report] section 15.3.2) of the complete loss of forced reactor coolant flow remains valid for the proposed change. Therefore, the change to the RCP low shaft speed trip setpoint does not increase the probability or consequences of any previously analyzed accident.

In addition, the proposed changes to Tables 2.2-1 and 3.3-4 do not alter the intent or method by which the surveillances are conducted. Therefore, the scope of evaluation performed gives reasonable assurance that there will not be an adverse impact on the consequences or the probability of any previously analyzed accident.

Therefore, the proposed revision does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The existing design basis adequately covers the plant response with the proposed change to the RCP low shaft speed trip setpoint. The change does not introduce new failure modes.

The proposed changes to Tables 2.2-1 and 3.3-4 do not modify the design or operation of any plant system. The proposed changes do not alter the intent or method by which the surveillances are conducted, other than adjusting the allowable values to reflect historical instrument performance data. Therefore, the proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes to Tables 2.2-1 and 3.3-4 modify the existing five column format to a two column format to show the RTS and ESFAS nominal trip setpoints and the process rack bistable allowable values for individual functions. Detailed operability criteria will be moved to the surveillance procedures. With the exception of the low shaft speed trip discussed below, the RTS and ESFAS setpoints remain unchanged and analysis has demonstrated that an adequate margin for normal trip setpoints exist and safety analysis limits are preserved in all RTS/ESFAS functions.

Since the safety limits of the design are still met, the proposed change to the RCP low shaft speed trip setpoint does not reduce the margin of safety.

Therefore, the proposed revision does not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut

NRC Deputy Director: Phillip F. McKee

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: March 10, 1997, as supplemented by letter dated May 20, 1997

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to revise TS 3/4.4.5 and 3.4.6.2, including associated Bases 3/4.4.5 and 3/4.4.6.2, to allow the implementation of steam generator (SG) tube alternate repair criteria for axial indications in the Westinghouse explosive tube expansion (WEXTEX) region below the top of the tubesheet and below the bottom of the WEXTEX transition that may exceed the current TS depth-based plugging limit. The allowed primary-to-secondary operational leakage from any one SG would be reduced from 500 gpd to 150 gpd.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Probability

Of the various accidents previously evaluated, the proposed changes only affect the steam generator tube rupture (SGTR) event evaluation and the postulated steam line break (SLB) accident evaluation. Loss-of-coolant accident (LOCA) conditions cause a compressive axial load to act on the tube. Therefore, since the LOCA tends to force the tube into the tubesheet rather than pull it out, it is not a factor in this amendment request. Another faulted load consideration is a safe shutdown earthquake (SSE); however, the seismic analysis of Series 51 steam generators has shown that axial loading of the tubes is negligible during an SSE.

For the SGTR event, the required structural margins of the steam generator tubes will be maintained by the presence of the tubesheet. Tube rupture is precluded for cracks in the Westinghouse explosive tube expansion (WEXTEX) region due to the constraint provided by the tubesheet. Therefore, Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes,'' margins against burst are maintained for both normal and postulated accident conditions.

The W* length supplies the necessary resistive force to preclude pullout loads under both normal operating and accident conditions. The contact pressure results from the WEXTEX expansion process, thermal expansion mismatch between the tube and tubesheet and from the differential pressure between the primary and secondary side. Therefore, the proposed change results in no significant increase in the probability of the occurrence of an SGTR or SLB accident. 1

The proposed changes do not affect other systems, structures, components or operational features. Therefore, based on the above evaluation, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

Consequences

The consequences of an SGTR event are affected by the primary-to-secondary leakage flow during the event. Primary-to-secondary leakage flow through a postulated broken tube is not affected by the proposed change since the tubesheet enhances the tube integrity in the region of the WEXTEX expansion by precluding tube deformation beyond its initial expanded outside diameter. The resistance to both tube rupture and collapse is strengthened by the tubesheet in that region. At normal operating pressures, leakage from primary water stress corrosion cracking (PWSCC) in the W* length is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region.

SLB leakage is limited by leakage flow restrictions resulting from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of crack face opening compared to free span indications. The total leakage, that is, the combined leakage for all such tubes, plus the combined leakage developed by any other ARC, must be below the maximum allowable SLB leak rate limit, such that off-site doses are maintained less than 10 CFR 100 guideline values.

Therefore, based on the above evaluation, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. Tube bundle integrity is expected to be maintained for all plant conditions upon implementation of the proposed steam generator alternate tube plugging criteria.

WCAP-14797, Revision 1, ''Generic W* Tube Plugging Criteria for 51 Series Steam Generator Tubesheet Region WEXTEX Expansions,'' requires that any tubes with indications identified using the bobbin coil probe during the bobbin sampling plan also be inspected with the RPC coil throughout the W* length of the tubes. The use of the RPC will: (a) identify any new or non-expected degradation mode that may not be identified using the bobbin coil probe, and (b) confirm and characterize the bobbin coil indication.

These changes do not introduce any new equipment or any change to existing equipment. No new effects on existing equipment are created nor are any new malfunctions introduced.

Therefore, based on the above evaluation, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes maintain the required structural margins of the steam

generator tubes for both normal and accident conditions. RG 1.121 is used as the basis in the development of the W* alternate tube plugging criteria for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC staff for meeting General Design Criteria 14, 15, 31, and 32 by reducing the probability and consequences of an SGTR. RG 1.121 concludes that by determining the limiting safe conditions of tube wall degradation beyond which tubes with unacceptable cracking, as established by inservice inspection, should be removed from service or repaired, the probability and consequences of an SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the ASME Code.

For primarily axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. WCAP-14797 defines a length, W*, of degradation free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces (with applicable safety factors applied). Application of the W* criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the W* criteria.

Plugging of the steam generator tubes reduces the reactor coolant flow margin for core cooling. Implementation of the proposed changes are expected to result in plugging of fewer tubes than with the current criteria. Thus, implementation of the proposed changes will maintain the margin of flow that may have otherwise been reduced by tube plugging.

Based on the above, it is concluded that the proposed changes do not result in a significant reduction of margin with respect to plant safety as defined in the FSAR Update or bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: William H. Bateman

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: October 24, 1997

Description of amendment request: The proposed Technical Specifications (TS) changes would revise TS Section 3/4.1.3.6 to exempt control rod 50-27 from the coupling test for the remainder of Cycle 7.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The probability of occurrence of the analyzed Control Rod Drop Accident (CRDA) is not increased by operating with the subject control blade in a condition not known to be coupled since the compensatory measures will assure that the blade will remain fully inserted below 10% rated thermal power where the CRDA is a concern. Monitoring of nuclear instrumentation responses in the vicinity of the blade when the drive is withdrawn above 10% power will assure the blade is tracking with the drive with no potential to stick and then drop. Scram impact forces from an uncoupled control rod are of insufficient energy to dislodge the fuel support (or fuel) or to cause a threat to the pressure boundary integrity. No reduction of system or equipment redundancy is involved.

The CRDA analyzed in the Safety Analysis Report (SAR) remains the limiting rod drop accident, and its consequences are unaffected by operation of the subject blade in the proposed manner. Operation of the control blade as described, i.e., withdrawn no further than the 46 position and in a condition not known to be coupled, has no adverse effect on scram performance in response to any other postulated accident. The scram insert motion of the rod is not affected by the potentially uncoupled condition, and since the rod is already partially inserted at position 46, it should have a slightly better negative reactivity insertion characteristic. Therefore, no potential to increase onsite or offsite radiological consequences beyond those previously analyzed in the SAR is created.

Operating the subject control blade in a condition not known to be coupled does not result in any onsite or offsite radiological consequences different from those previously analyzed in the SAR. The subject control blade will be fully inserted below 10% thermal power where the CRDA is a concern and will be monitored during drive withdrawal above 10% thermal power to assure it is tracking with the drive. Scram performance is not adversely affected by operation from the near full-out position of 46. Hence, no new failure modes are created and consequences of any postulated failures are not increased.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The Safety Analysis Report (SAR) analyzed Control Rod Drop Accident (CRDA) remains the only type of accident initiated (or contributed to) by the control rod drive/control blade interface. The compensatory actions to be taken when operating the subject blade in a condition not verified to be coupled assure that no new types of accidents can occur. The subject control blade will be fully inserted below 10% thermal power where the CRDA is a concern and will be monitored during drive withdrawal above 10% thermal power to assure it is tracking with the drive. Scram performance is not adversely affected by operation from the near full-out position of 46. Since no adverse effect on insertion or scram performance is expected, the previously analyzed accidents encompass any potential consequence of operating with an uncoupled control blade.

The compensatory actions to be taken when operating the subject blade in a condition not verified to be coupled assure that no new failure modes are created, and, therefore, no new type of equipment malfunction is introduced by operating the subject control blade in the proposed manner.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

Operation with the subject control blade in a condition not known to be coupled for the remainder of Cycle 7 at LGS [Limerick Generating Station] Unit 1, but with the compensatory actions described below, does not reduce the existing margin of safety determined by the analysis of the Control Rod Drop Accident (CRDA). The CRDA analyzed in the Safety Analysis Report (SAR) remains bounding in that the subject rod will be fully inserted below 10% rated thermal power where the CRDA is a concern. Above 10% power, when the associated drive is withdrawn, the nuclear instrumentation in the vicinity of the blade will be monitored to assure the blade tracks with the drive, providing assurance that the position of the blade can be ascertained by the drive position. If the control blade can not be verified to have followed the drive, then the rod shall be completely inserted and the control rod directional valves disarmed in accordance with existing TS requirements. To minimize any scram impact loadings, the blade will be operated at the near full-out position of 46 except for intermediate positions temporarily occupied during standard rod withdrawal sequences. Operating the subject control blade in the proposed manner will have no adverse effect on insertion or scram performance of the blade and will preserve the margin of safety.

Therefore, the proposed TS change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:*Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of amendment request: October 6, 1997

Description of amendment request: The amendment to the Technical Specifications would increase the allowable band for control and shutdown rod demanded position versus indicated position from plus or minus 12 steps to plus or minus 18 steps when the power level is not greater than 85% rated thermal power. The amendment is identical to Amendment 183 for Salem Unit 2, which was issued September 10, 1997, as an exigent amendment.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the rod misalignment criteria of [plus or minus] 18 steps for core powers equal to or below 85% of RATED THERMAL POWER (RTP) does not increase the probability of previously evaluated accidents. Increasing the magnitude of the allowed control rod misalignment is not a contributor to the mechanistic cause of an accident evaluated in any accident analysis. The magnitude of control rod indicated misalignment is a parameter used to establish the initial conditions for accident evaluation.

The proposed increase in the allowable rod misalignment from the current [plus or minus] 12 steps for reactor powers equal to or less than 85% RTP does not involve a significant increase in the consequence of any previously evaluated accident. Rod misalignment affects power distribution, shutdown margin and the ejected rod accident. An extension of the allowable rod misalignment above and below 85% RTP has been analyzed in Westinghouse WCAP-14672. As provided in WCAP-14672, above 85% the allowable misalignment is governed by the available peaking factor margins as determined by flux maps.

[Public Service Electric & Gas] PSE&G is simplifying the proposed change by keeping the currently allowed [plus or minus] 12 step misalignment in Technical Specifications 3.1.3.1 and 3.1.3.2.1 for reactor power greater than 85% RTP.

The PSE&G proposed change is to allow [plus or minus] 18 steps misalignments in Technical Specifications 3.1.3.1 and 3.1.3.2.1 for reactor power less than or equal to 85% RTP. As demonstrated in WCAP-14672, for reactor powers less than 85% RTP, the available peaking factor margin increases faster than any penalty associated with a [plus or minus] 18 step misalignment.

As described in Section 4.0 of the Westinghouse WCAP, a conservative penalty factor has been applied to the rod insertion allowance (RIA) of the shutdown margin calculation to account for rods misaligned an additional [plus or minus] 6 steps (for a total of [plus or minus] 18 steps). This conservative penalty factor is applied as part of the reload analysis in order to satisfy Technical Specification 3.1.1.1.

In addition to the normal, or Condition 1, operational transients, the impacts of increased rod misalignment on Condition II, III and IV accident analysis have also been evaluated. The proposed increase in rod misalignment does not have a significant effect on any moderator or Doppler reactivity coefficients or defects, boron worth or reactor kinetics parameters.

To account for the potential increase in ejected rod parameters, conservative penalty factors have been applied to the reload safety evaluation to cover the additional [plus or minus] 6 step misalignment. Margin is available in the reload safety analysis to accommodate this impact.

Therefore, the proposed amendment does not increase the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

0No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed change to the rod misalignment criteria of [plus or minus] 18 steps below 85% RTP. The implementation of the proposed rod misalignment criteria will have no adverse effect on the performance of any other safety related system. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety. The Technical Specifications allowed increase in peaking factors as power is reduced accommodates the peaking factor penalty associated with the additional [plus or minus] 6 step misalignment for core powers equal to or less than 85% RTP. Therefore, there is no change to the peaking factors assumed in the safety analysis. In addition to peaking factors, there is no change in any other current limit input into the safety analysis. As the input, or initial conditions, of the safety analysis have not changed, there is no reduction in the margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of amendment request: October 14, 1997

Description of amendment request: The proposed amendment will modify the Salem Unit 1 Technical Specification (TS) 3.4.6.3, ''Primary Coolant System Pressure Isolation Valves Limiting Condition for Operation,'' to be consistent with Salem Unit 2 TSs.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The majority of the proposed changes, as described above, are editorial in nature. Rewording, and reformatting the Limiting Condition for Operation, including the surveillance requirements do not involve a significant increase to the probability or consequences of an accident.

Those substantive changes involving the addition of (1) new reactor coolant system pressure isolation valves, (2) providing for a shorter test frequency upon entry into Mode 4, and (3) adding a new surveillance test requirement, do not increase the probability or consequences of an accident. These changes ensure that the system and components needed to prevent and minimize the effects of inter-system loss of coolant are properly identified in the Technical Specifications.

Although pressure isolation valves are being added to the Technical Specification table, these valves were already included in the IST [inservice testing] program as pressure isolation valves and were being tested as such. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change, as described above, does not physically alter the facility or the operation of the facility. The majority of the changes are editorial in nature and provide for improvement in the human factors of the Technical Specifications, while properly identifying all the pressure isolation valves in the Technical Specifications. The addition of valves into the Technical Specification is an administrative change that improves the quality of the LCO [limiting condition for operation], but does not add components to the facility.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety, as defined in the bases for any technical specifications, depend upon proper identification of equipment and performance of the proper surveillance requirements to demonstrate equipment operability. The proposed change will ensure that the proper valves are identified and tested in accordance with the Technical Specification requirements.

The proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit - N21, P.O. Box 236, Hancocks Bridge, NJ 08038

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: October 21, 1997

Description of amendment request: The proposed amendment revises Technical Specification Tables 3.3-1 and 4.3-1 to require that Functional Unit, ≥2. Power Range, Neutron Flux,'' be operable in Mode 3, as well as in Modes 1 and 2. The change is being proposed because the licensee has determined that the power range nuclear instrumentation should be operable in Mode 3 whenever the reactor trip system breakers are in the closed position and the control rods are capable of being withdrawn.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requirement for operability of a trip and the surveillance requirements to ensure the functionality of the trip are independent of the probability of an accident previously evaluated. The accident that this trip is intended to mitigate is the Rod Withdrawal from Subcriticality event. The surveillance procedure and the requirement for the trip to be operational when the Control Rod Drive System is capable of rod movement mitigate the consequences of this event, and do not increase the probability of a rod withdrawal from subcritical.

Therefore, the probability and consequences of an accident previously evaluated are not significantly increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any modifications to existing plant equipment, do not alter the function of any plant systems, do not introduce any new operating configurations or new modes of plant operation, or change the safety analyses. The proposed change is intended to ensure that the trip function is available and will perform as designed in the event of a previously evaluated event.

The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not reduce the margin of safety, because assurance of the operability of the trip function is increased by the proposed change.

Based on the above, PSE&G [Public Service Electric & Gas Company] has determined that the proposed changes do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, NJ

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit - N21, P.O. Box 236, Hancocks Bridge, NJ 08038

NRC Project Director: John F. Stolz

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: August 28, 1997

Description of amendment request: The proposed change would revise Technical Specification 3.4.11, ''Reactor Coolant System (RCS) Pressure and Temperature (P/T) Limits,'' to incorporate the new P/T curves, which were provided by General Electric Nuclear Energy in report number GE-NE-B1301793-01, ''Perry Unit 1 RPV Surveillance Materials Testing and Analysis.''

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will provide for approved P/T limit curves which are valid through 9 effective full-power years (EFPY) and 18 EFPY. This change will not affect any Safety Limits, Power Distribution Limits, or Limiting Conditions for Operation. The proposed changes incorporate operating limits which provide margin to brittle failure of the reactor vessel based on testing of the irradiated reactor vessel materials (base metal, weld material, and heat affected zone material). The limits ensure that adequate safety margins against nonductile or rapidly propagating failure exist during normal operation, anticipated operational occurrences, and system hydrostatic tests. The specimens have been tested and analyzed in accordance with 10 CFR 50, Appendices G and H, using the methods described in Generic Letter 88-11 and Regulatory Guide 1.99 Revision 2. The predicted lowest upper shelf energy at 32 EFPY was greater than the minimum required by 10 CFR 50, Appendix G. The adjusted reference temperature for the limiting material was lower than the 200 degree Fahrenheit limit required by Regulatory Guide 1.99 Revision 2. As such, the integrity of the reactor pressure coolant boundary is maintained. The changes will result in equivalent or more conservative limits on reactor vessel pressure as a function of temperature for all operational conditions (hydrostatic and leak testing, non-nuclear heatup/cooldown, and core critical operations). The methodology used to derive these values produces limits which continue to ensure that sufficient margin is maintained to meet the criteria of GDC 31, ''Fracture Prevention of Reactor Coolant Pressure Boundary.'' There are no plant modifications associated with this change and no new or revised system interfaces. The proposed

changes do not increase the probability of occurrence or consequences previously evaluated because the temperature shifts are well within equipment operating ranges. As such, there is no increase in the probability of occurrence or the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not involve any new modes of operation. The only change will be operation of the plant within operating pressure limits which are determined in a more conservative manner. Therefore, no new failure mode or accident sequence is introduced by this change.

The testing and analysis meets 10 CFR 50, Appendices G and H, requirements; therefore, no new accident types, such as brittle fracture of a reactor pressure coolant boundary component is postulated. The adjusted reference temperature and upper shelf energy predicted at 32 EFPY are well within the limits of 10 CFR 50, Appendices G and H. Therefore, the possibility of an accident of a new or different type than any previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The P/T limits are established to provide acceptable margins for the operation of the reactor coolant system during heat up and cool down, criticality, and hydrotest conditions. Technical Specification 3.4.11 limits the rates of change of temperature and pressure to values consistent with the fracture toughness requirements of 10 CFR 50, Appendices G and H, and ASME Boiler and Pressure Vessel Code Section III Appendix G. The bases section for Technical Specification 3.4.11 refers to 10 CFR 50, Appendices G and H, and ASME Code Section III Appendix G. Changes in these limits are necessary because the fracture toughness properties of ferritic materials in the reactor vessel change as a function of reactor operating time. The specific requirements for fracture toughness and reactor vessel material surveillance that must be considered in developing the P/T limits are defined by 10 CFR 50, Appendices G and H. The specific limits defined by 10 CFR 50, Appendices G and H, set the margin of safety for the reactor pressure vessel coolant boundary. Since the testing and analysis of the vessel specimens meet the requirements and limits defined in 10 CFR 50, Appendices G and H, the margin of safety as defined in the basis for Technical Specification 3.4.11 is not reduced. The revised curves are based on the latest NRC guidelines along with actual neutron fluence data for Perry. The new limits conservatively account for irradiation embrittlement effects, thereby maintaining the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: September 8, 1997

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.2.2.e, ''Organization - Unit Staff,'' by removing the reference to the NRC Policy Statement on working hours. Administrative procedures will be developed to limit the working hours of unit staff who perform safety-related functions.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to TS 5.2.2.e only alters the administrative location of and the regulatory controls applicable to unit staff specific overtime limits and working hours. Overtime will remain controlled by plant administrative procedures. Changes to the relocated overtime limits and working hours will be subject to review and evaluation under 10 CFR 50.59, ''Changes, Tests and Experiments.'' There is not an increase in the probability of an accident previously evaluated because no change is being made to any accident initiator. No previously analyzed accident scenario is changed, and initiating conditions and assumptions remain as previously analyzed.

There is not an increase in the radiological consequences of an accident previously evaluated because the proposed change does not affect accident conditions or assumptions used in evaluating the radiological consequences of an accident. The proposed change does not alter the source term, containment isolation, or allowable radiological releases. Therefore, there is no increase in the radiological consequences of an accident previously evaluated.

2. The proposed change does not create the possibility or a new or different kind of accident from any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not change the way the plant is operated, and no new or different failure modes have been defined for any plant system or component important to safety, nor has any limiting single failure been identified as a result of the proposed change. No new or different types of failures or accident initiators are introduced by the proposed change.

The proposed change to TS 5.2.2.e only alters the administrative location of and the regulatory controls applicable to unit staff specific overtime limits and working hours. Therefore, there is no possibility created for a new or different kind of accident.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not involve a reduction in a margin of safety because unit staff overtime is not an input in the calculation of a safety margin with regard to Technical Specification Safety Limits, Limiting Safety System Settings, other Technical Specification Limiting Conditions for Operation, the Operational Requirements Manual, or other previously defined margins for any structure, system, or component important to safety. The proposed change to TS 5.2.2.e only alters the administrative location of and the regulatory controls applicable to unit staff specific overtime limits and working hours.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: October 24, 1997

Brief description of amendments: Change to the core safety limit curves and overtemperature N-16 reactor trip function setpoints to support operation with Unit 1, cycle 7 core configuration.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

A. Revision to the Unit 1 Core Safety Limits

Analyses of reactor core safety limits are required as part of reload calculations for each cycle. TU Electric has performed the analyses of the Unit 1, Cycle 7 core configuration to determine the reactor core safety limits. The methodologies and safety analysis values result in new operating curves which, in general, permit plant operation over a similar range of acceptable conditions. This change means that if a transient were to occur with the plant operating at the limits of the new curve, a different temperature and power level might be attained than if the plant were operating within the bounds of the old curves.

However, since the new curves were developed using NRC approved methodologies which are wholly consistent with and do not represent a change in the Technical Specification BASES for safety limits, all applicable postulated transients will continue to be properly mitigated. As a result, there will be no significant increase in the consequences, as determined by accident analyses, of any accident previously evaluated.

B. Revision to Unit 1 Overtemperature N-16 Reactor Trip Setpoints

As a result of changes discussed, the Overtemperature reactor trip setpoint has been recalculated. These trip setpoints help ensure that the core safety limits are protected and that all applicable limits of the safety analysis are met.

Based on the calculations performed, no significant changes to the safety analysis values for Overtemperature reactor trip setpoint were required. The f(deltaI) trip reset function was revised due to more top-skewed axial power distributions predicted for this cycle. The analyses performed show that, using the TU Electric methodologies, all applicable limits of the safety analysis are met. This setpoint provides a trip function which allows the mitigation of postulated accidents and has no impact on accident initiation. Therefore, the changes in safety analysis values do not involve an increase in the probability of an accident and, based on satisfying all applicable safety analysis limits, there is no significant increase in the consequences of any accident previously evaluated.

In addition, sufficient operating margin has been maintained in the overtemperature setpoint such that the risk of turbine runbacks or reactor trips due to upper plenum flow anomalies or other operational transients will be minimized, thereby, reducing potential challenges to the plant safety systems.

SUMMARY

The changes in the amendment request applies NRC approved methodologies to changes in safety analysis values, new core safety limits and new N-16 setpoint and parameter values to assure that all applicable safety analysis limits have been met. The potential for an operational transient to occur has not been affected and there has been no significant impact on the consequences of any accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes involve the calculation of new reactor core safety limits and overtemperature reactor trip setpoint resets. As such, the changes play an important role in the analysis of postulated accidents but none of the changes effect plant hardware or the operation of plant systems in a way that could initiate an accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

In reviewing and approving the methods used for safety analyses and calculations, the NRC has approved the safety analysis limits which establish the margin of safety to be maintained. While the actual impact on safety is discussed in response to question 1, the impact on margin of safety is discussed below:

A. Revision to the Unit 1 Reactor Core Safety Limits

The NRC-approved TU Electric reload analysis methods have been used to determine new reactor core safety limits. All applicable safety analysis limits have been met. The methods used are wholly consistent with Technical Specification BASES 2.1 which is the bases for the safety limits. In particular, the curves assure that for Unit 1, Cycle 7, the calculated DNBR is no less than the safety analysis limit and the average enthalpy at the vessel exit is less than the enthalpy of saturated liquid. The acceptance criteria remains valid and continues to be satisfied; therefore, no change in a margin of safety occurs.

B. Revision to Unit 1 Overtemperature N-16 Reactor Trip Setpoints

Because the reactor core safety limits for CPSES Unit 1, Cycle 7 are recalculated, the Reactor Trip System instrumentation setpoint values for the Overtemperature N-16 reactor trip setpoint which protect the reactor core safety limits must also be recalculated. The Overtemperature N-16 reactor trip setpoint helps prevent the core and Reactor Coolant System from exceeding their safety limits during normal operation and design basis anticipated operational occurrences. The most relevant design basis analysis in Chapter 15 of the CPSES Final Safety Analysis Report (FSAR) which is affected by the Overtemperature reactor trip setpoint is the Uncontrolled Rod Cluster Control Assembly Bank Withdrawal at Power (FSAR Section 15.4.2). This event has been analyzed with the new safety analysis value for the Overtemperature reactor trip setpoint to demonstrate compliance with event specific acceptance criteria. Because all event acceptance criteria are satisfied, there is no degradation in a margin of safety.

The nominal Reactor Trip System instrumentation setpoints values for the Overtemperature N-16 reactor trip setpoint (Technical Specification Table 2.2-1) are determined based on a statistical combination of all of the uncertainties in the channels to arrive at a total uncertainty. The total uncertainty plus additional margin is applied in a conservative direction to the safety analysis trip setpoint value to arrive at the nominal and allowable values presented in Technical Specification Table 2.2-1. Meeting the requirements of Technical Specification Table 2.2-1 assures that the Overtemperature reactor trip setpoint assumed in the safety analyses remains valid. The CPSES Unit 1, Cycle 7 Overtemperature reactor trip setpoint is not significantly different from the previous cycle, and thus provides operational flexibility to withstand mild transients without initiating automatic protective actions. Although the value of the f(deltaI) trip reset function setpoint is different, the Reactor Trip System instrumentation setpoint values for the Overtemperature N-16 reactor trip setpoint are consistent with the safety analysis assumptions which have been analytically demonstrated to be adequate to meet the applicable event acceptance criteria. Thus, there is no reduction in a margin of safety.

Using the NRC approved TU Electric methods, the reactor core safety limits are determined such that all applicable limits of the safety analyses are met. Because the applicable event acceptance criteria continue to be met, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:*University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, N.W., Washington, DC 20036

NRC Project Director: James W. Clifford, Acting

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Energy Corporation, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: October 13, 1997

Description of amendment request: The proposed amendments would support replacement of the three safety-related wide range level instruments. The engineered safety features trip setpoint for the refueling water automatic switchover to recirculation would be revised to account for the difference in instrument uncertainty associated with wide range level instruments and provide additional response time margin.

Date of publication of individual notice in **Federal Register:** October 22, 1997 (62 FR 54859)

Expiration date of individual notice: November 21, 1997

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina

Duke Energy Corporation, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: October 20, 1997

Description of amendment request: The proposed amendments would allow use of a rerolling process as an additional repair method for tube degradation found in the tubesheet region. The rerolling method is designed to ensure that the area of degradation will not serve as a pressure boundary once the repair roll is installed, thus permitting the tube to remain in service.

Date of publication of individual notice in **Federal Register:** October 28, 1997 (62 FR 55835)

Expiration date of individual notice: Comment period ends November 12, 1997; Notice period ends November 28, 1997

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for 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 these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: October 4, 1997

Brief description of amendments: These amendments revise the surveillance requirements in Technical Specifications (TSs) 4.1.2.3.1, 4.1.2.4.1, 4.5.2.b, and 4.6.2.1.b and associated Bases. The subject surveillance requirements are applicable to the charging/high-head safety injection pumps, low-head safety injection pumps, and the containment quench spray pumps. The proposed changes replace the current specific test acceptance criteria contained in these surveillance requirements with requirements to verify pump performance in accordance with the inservice testing program, the emergency core cooling system flow analysis, or the containment integrity safety analysis, as applicable. The proposed changes also make minor editorial changes in these TSs and make conforming changes in the TS Index pages.

Date of issuance: October 28, 1997

Effective date: Both units, as of date of issuance, to be implemented within 60 days.

Amendment Nos.: 207, 86

Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 18, 1996 (61 FR 66706) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 28, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: May 27, 1997, supplemented by October 6, 1997

Brief description of amendment: The amendment eliminated selected response time testing (RTT) surveillance requirements (SRs) from the Technical Specifications (TSs) for certain components of the following systems: reactor protection system (SR 3.3.1.1.15), primary containment and drywell isolation instrumentation (SR 3.3.6.1.8), and emergency core cooling system (SRs 3.5.1.8 and 3.5.2.7).

Date of issuance: November 5, 1997

Effective date: November 5, 1997

Amendment No.: 133

Facility Operating License No. NPF-29: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1997 (62 FR 33122) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 5, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 17, 1996, as supplemented October 14, 1997

Brief description of amendment: The amendment revises

Facility Operating License No. NPF-38 to reflect the name change from Louisiana Power & Light Company to Entergy Louisiana, Inc.

Date of issuance: November 3, 1997

Effective date: November 3, 1997, to be implemented within 60 days.

Amendment No.: 134

Facility Operating License No. NPF-38: Amendment revised

Facility Operating License No. NPF-38.

Date of initial notice in **Federal Register:** April 9, 1997 (62 FR 29749) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 1997. The letter dated October 14, 1997, provided clarifying information which did not alter the initial no significant hazards determination. No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: March 27, as supplemented April 3, May 1, and August 20, 1997.

Brief description of amendment: Change Technical Specifications (TS) to permanently establish a primary-to-secondary leak rate of 150 gallons per day through any one steam generator and specify the steam generator tube inservice inspection requirements for pit-like intergranular attack degradation in the ''B'' Once-Through-Steam-Generator.

Date of issuance: October 28, 1997

Effective date: October 28, 1997

Amendment No.: 158

Facility Operating License No. DPR-72: Amendment revised the TS.

Date of initial notice in **Federal Register:** June 4, 1997 (62 FR 30632) The August 20, 1997, letter provided clarifying information that did not affect the initial no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: August 27, 1997

Brief description of amendments: The admendments change the Administrative Section of the Technical Specifications (TS) to allow the use of 12-hour shifts.

Date of issuance: October 27, 1997

Effective date: October 27, 1997

Amendment Nos: 194 and 188Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the TS.

Date of initial notice in **Federal Register:** September 24, 1997 (62 FR 50006) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 27, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: March 26, 1997.

Brief description of amendments: The amendments modify surveillance 4.7.5.1.e.2 which requires verification of the control room ventilation system autostart function.

Date of issuance: October 28, 1997

Effective date: October 28, 1997, with full implementation within 45 days.

Amendment Nos.: 218 and 202

Facility Operating License Nos. DPR-58 and DPR-74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1997 (62 FR 27796) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 28, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: May 15, 1997

Brief description of amendment: The amendment revises Technical Specification Sections 3.1 and 4.1, ''Reactor Protection System,'' and the associated Bases to remove run mode intermediate range monitor high flux/inoperative with the associated average power range monitor downscale scram trip function. The amendment also makes other editorial revisions.

Date of issuance: October 27, 1997

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 103

Facility Operating License No. DPR-21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1997 (62 FR 33127) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360 and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: September 2, 1997

Brief description of amendment: The amendment changes the Technical Specifications (TSs) by modifying the maximum allowed primary containment internal pressure during normal operation from 2.1 pounds per square inch gauge (psig) to 1.0 psig. The TS Bases, Section 3/4.6.1.4, is also updated to reflect the new maximum allowed primary containment internal pressure during normal operation.

Date of issuance: October 27, 1997

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 209

Facility Operating License No. DPR-65: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 24, 1997 (62 FR 50007) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: November 25, 1996, as supplemented December 12, 1996, April 23, May 8, July 1, August 21, and September 29, 1997

Brief description of amendment: The amendment modifies the Technical Specification requirements associated with the Minimum Critical Power Ratio (MCPR) safety limits for Cycle 18 based on the cycle-specific analysis of the current mixed core of GE11/GE10 fuel parameters.

Date of issuance: October 29, 1997

Effective date: October 29, 1997

Amendment No.: 99

Facility Operating License No. DPR-22: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1997 (62 FR 17238) The December 12, 1996, letter provided an affidavit for the original application dated November 25, 1996. The April 23, May 8, August 21, and September 29, 1997, letters provided clarifying information in response to the staff's request for additional information during a teleconference on March 18, 1997. The July 1, 1997, letter provided a nonproprietary version of the April 23, 1997, submittal. This information was within the scope of the original application and did not change the staff's initial proposed no significant hazards considerations determination. Therefore, renoticing was not warranted. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1997. No significant hazards consideration comments received: No.

*Local Public Document Room location:*Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: November 27, 1996, as supplemented August 15, September 2, and October 3, 1997

Brief description of amendments: The amendments incorporate Combustion Engineering steam generator tube sleeve designs and installation and examination techniques into the plant Technical Specifications (TS). Specifically, the amendments make changes to TS 4.12, ''Steam Generator Tube Surveillance,'' and its associated Bases Section B.4.12, ''Steam Generator Tube Surveillance.''

Date of issuance: November 4, 1997

Effective date: November 4, 1997, with full implementation within 30 days

Amendment Nos.: 132 and 124

Facility Operating License Nos. DPR-42 and DPR-60: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1997 (62 FR 43370) The August 15, September 2, and October 3, 1997, letters provided clarifying information and updated TS pages. This information was within the scope of the original application and did not change the staff's initial no significant hazards considerations determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 4, 1997.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

PECO Energy Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: June 4, 1997

Brief description of amendments: The proposed change revises the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, Technical Specifications to eliminate an inconsistency between emergency core cooling system (ECCS) operability requirements and the auto-start and protective trip bypass of the emergency diesel generators on an ECCS initiation signal during certain plant configurations.

Date of issuance: October 24, 1997

Effective date: Both units, as of date of issuance, to be implemented within 30.

Amendments Nos.: 221 and 226

Facility Operating License Nos. DPR-44 and DPR-56: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1997 (62 FR 43373) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 24, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: May 19, 1997, as supplemented by letter dated August 25, 1997

Brief description of amendment: This amendment changes the Hope Creek Technical Specification (TS) 3.7.1.3, ''Ultimate Heat Sink,'' to raise the minimum allowable ulimate heat sink (UHS) water level from 76 feet to 80 feet, lower the maximum allowable UHS temperature from 88.6°F to 85°F, and reflect that continued plant operation to a UHS temperature of 87°F depends upon the association of UHS temperature and safety system availability. The associated Surveillance Requirement, TS 4.7.1.3, is changed to decrease the river water temperature, at which increasing temperature surveillance is required, from 85°F to 82°F. The requirements of TS 3.7.1.1, ''Safety Auxiliaries Cooling System (SACS),'' TS 3.7.1.2, ''Station Service Water System (SSWS),'' and TS 3.8.1.1, ''Electrical Power Systems,'' are revised to reflect the revised TS 3.7.1.3. In addition, the Bases for 3/4.7.1, ''Service Water Systems,'' are appropriately revised.

Date of issuance: October 28, 1997

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 106

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1997 (62 FR 33132) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: March 31, 1997, as supplemented by letters dated July 16, August 26, and October 3, 1997

Brief description of amendment: This amendment changes Technical Specification (TS) 2.1.2, ''THERMAL POWER, High Pressure and High Flow,''

ACTION a.1.c for TS 3.4.1.1, ''Recirculation Loops,'' and the Bases for TS 2.1, ''Safety Limits.'' These changes are being made to implement an appropriately conservative Safety Limit Minimum Critical Power Ratio to include Cycle 8 specific analyses for all Hope Creek core and fuel designs.

Date of issuance: November 4, 1997

Effective date: The license amendment is effective as of its date of issuance and shall be implemented within 60 days.

Amendment No.: 107

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 13, 1997 (62 FR 43374) The August 26 and October 3, 1997, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 4, 1997. No significant hazards consideration comments received: No.

*Local Public Document Room location:*Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: September 29, 1997

Brief description of amendment: This amendment changes Technical Specification (TS) 3/4.11.1, ''Liquid Effluent - Concentration.'' The change adds a requirement to perform weekly sampling and monthly and quarterly composite analyses of the Station Service Water System when the Reactor Auxiliaries Cooling System is contaminated. The licensee has also proposed an editorial change to TS Table 4.11.1.1.1-1. In Liquid Release Type B, the licensee is proposing that the acronym for Station Service Water System be changed from GSW to SSWS. This proposed change will be addressed in a future license amendment.

Date of issuance: November 6, 1997

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No.: 108

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 6, 1997 (62 FR 52161) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 6, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: September 24, 1997

Brief description of amendment: This amendment adds a Surveillance Requirement to Technical Specification 3/4.5.1, ''Emergency Core Cooling Systems'', to perform a monthly valve position verification for the four residual heat removal cross-tie valves.

Date of issuance: November 6, 1997

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 109

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 6, 1997 (62 FR 52162) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 6, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: August 20, 1997

Brief description of amendment: This amendment changes the Technical Specifications (TSs) to provide for: 1) the relocation of suppression chamber volume references in Limiting Condition for Operation (LCO) 3.5.3 to the Hope Creek (HC) Updated Final Safety Analysis Report (UFSAR) and TS Bases as appropriate; 2) the revision of the suppression chamber volume currently listed in LCO 3.5.3.b; 3) the relocation of the suppression chamber volume references in LCO 3.6.2.1.a.1 to the UFSAR and TS Bases; and 4) the revision to the suppression chamber volume reference in TS 5.2.1 to reference the TS Bases section where this information will reside.

Date of issuance: November 6, 1997

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No.: 110

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** September 24, 1997 (62 FR 50010) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 6, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: August 19, 1997, as supplemented September 29, 1997.

Brief description of amendment: The proposed amendment revises the Ginna Station Improved Technical Specifications by adding a note to the Containment Spray (CS) Limiting Condition for Operation 3.6.6 which allows the CS pumps in MODE 4 to be placed in pull-stop, and motor-operated valves 896A and 896B to have their DC control power restored with the valves placed in the closed position in order to perform interlock and valve testing of MOVs 857A, 857B, and 857C. A time limit of 2 hours is placed on this configuration for each test.

Date of issuance: October 29, 1997

Effective date: October 29, 1997

Amendment No.: 68

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 24, 1997 (62 FR 50011) The September 29, 1997, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: September 17, 1997

Brief description of amendments: The amendments change Technical Specification 3/4.4.9, ''Specific Activity,'' and the associated Bases to reduce the limit associated with dose equivalent iodine-131. The steady-state dose equivalent iodine-131 limit would

be reduced by 50 percent from 0.3 mu Curie/gram to 0.15 mu Curie/gram and the maximum instantaneous value would be reduced by 50 percent from 18 mu Curie/gram to 9 mu Curie/gram.

Date of issuance: October 29, 1997

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: Unit 1 - 132; Unit 2 - 124

Facility Operating License Nos. NPF-2 and NPF-8: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** September 24, 1997 (62 FR 49998) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 29, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440 Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: August 14, 1997, as supplemented September 26 and October 1, 1997.

Brief description of amendment: This amendment changes the design basis as described in the Updated Safety Analysis Report by adding a description of the methodology utilized for determining the systems and components that are considered to require protection from tornado missiles.

Date of issuance: November 4, 1997

Effective date: November 4, 1997

Amendment No.: 90

Facility Operating License No. NPF-58: This amendment revised the license.

Date of initial notice in **Federal Register:** September 16, 1997 (62 FR 48674). The September 26 and October 1, 1997, submittals provided supplemental information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 4, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: May 16, 1997 (TXX-97119)

Brief description of amendments: The amendments revised core safety limit curves and Overtemperature N-16 reactor trip setpoints based on analyses of the core configuration for CPSES Unit 2, Cycle 4. These changes apply equally to CPSES Units 1 and 2 licenses since the Technical Specifications are combined.

Date of issuance: October 30, 1997

Effective date: October 30, 1997

Amendment Nos.: Unit 1 - Amendment No. 55; Unit 2 - Amendment No. 41

Facility Operating License Nos. NPF-87 and NPF-89: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 16, 1997 (62 FR 38140) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for 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 these amendments. If the Commission has prepared an environmental assessment

under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By December 19, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, 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. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: October 24, 1997

Brief description of amendment: The amendment adds a footnote to Technical Specification 3.7.A.5, ''Primary Containment.'' The footnote provides a one time exception to the reverse flow testing requirement for containment isolation check valve 30-CK-432.

Date of issuance: October 30, 1997

Effective date: As of date of issuance and shall be implemented by November 2, 1997.

Amendment No.: 174

Facility Operating License No. DPR-35: This amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the State of Massachusetts, and final no significant hazards consideration determination are contained in a Safety Evaluation dated October 30, 1997.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360

NRC Project Director: Ronald B. Eaton, Acting Director

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 17, 1997

Brief description of amendment: The amendment revised Technical Specification 4.5.2b and associated Bases to eliminate the requirement to vent the centrifugal charging pump casings.

Date of issuance: November 3, 1997

Effective date: November 3, 1997

Amendment No.: 114

Facility Operating License No. NPF-42: The amendment revised the Technical Specifications. Press release issued requesting comments as to proposed no significant hazards consideration: Yes. October 24, 1997. Coffey County Today Newspaper (Kansas). Comments received: Yes. Comments were submitted by Mr. Dave Lochbaum of the Union of Concerned Scientists by letter dated October 29, 1997. Verbal comments were received from Larry Myers on October 28, 1997. The staff responded to these comments in the safety evaluation attached to the November 3, 1997, amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Kansas and final determination of no significant hazards consideration are contained in a Safety Evaluation dated November 3, 1997.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Dated at Rockville, Maryland, this 12th day of November 1997.

For the Nuclear Regulatory Commission

Elinor G. Adensam,

Acting Director, Division of Reactor Projects - III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 97–30217 Filed 11–18–97; 8:45 am]

BILLING CODE 7590–01–F

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22883/812–10536]

EQ Advisors Trust; Notice of Application

November 12, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for an order under (i) section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting relief from sections 13(a)(2), 18(f)(1), 22(f), and 22(g) of the Act; and (ii) section 17(d) of the Act and rule 17d–1 to permit certain joint transactions.

Summary of Application: Applicants request an order to permit EQ Advisors Trust to implement a deferred compensation plan for certain of its trustees.

Applicants: HQ Advisors Trust (the ''Trust'') and EQ Financial Consultants, Inc. (the ''Manager'').

FILING DATES: The application was filed on April 7, 1997, and amendments were filed on July 14, 1997 and November 10, 1997.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 8, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. EQ Advisors Trust, 1290 Avenue of the Americas, New York, New York 10104.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware business trust. The Trust is currently composed of several, separately managed series (''Portfolios''). The Trust offers shares in each of its Portfolios only to insurance companies and their separate accounts that fund variable annuity and variable life insurance contracts (''Variable Contracts''). The Trust is currently serving as the underlying investment medium for Variable Contracts issued by the Equitable Life Assurance Society of the United States (''Equitable''). The Trust may in the future offer its shares to separate accounts funding Variable Contracts of insurance companies unaffiliated with Equitable or directly to tax qualified pension and retirement plans outside the separate account context.

2. The Manager, an indirect wholly-owned subsidiary of Equitable, has overall responsibility for the investment management and administration of the Trust and its Portfolios. Rowe Price-Fleming International, Inc., T. Rowe Price Associates, Inc., Putnam Investment Management, Inc., Massachusetts Financial Services Company, Morgan Stanley Asset Management, Inc., Warburg Pincus Counsellors, Inc., and Merrill Lynch Asset Management, L.P. serve as the sub-advisers (each an ''Adviser'') to one or more Portfolios. Applicants request that the relief apply to the Trust and any registered open-end management investment company that in the future is advised by the Manager or any entity controlled by the Manager.[1]

3. The Trust's board of trustees (''Trustees'') currently consists of six members, two of whom are ''interested persons'' of the Trust within the meaning of Section 2(a)(19) of the Act. The four non-interested Trustees (''Eligible Trustees'') will receive an annual retainer fee, a fee for each board meeting and committee meeting attended, and an additional fee for performing special services for the Trust.

4. The deferred compensation plan for Eligible Trustees (the ''Plan'') was ratified by the Trustees on March 31, 1997. The purpose of the Plan is to permit Eligible Trustees to defer receipt of all or a portion of their fees to enable them to defer payment of income taxes, to avoid a loss or reduction of Social Security benefits, or for other reasons. Applicants believe that the Plan will better enable the Trust to attract and retain high caliber trustees. The Plan may be amended from time to time, provided that, any amendments are not inconsistent with the relief granted pursuant to this application.

5. Under the Plan, each Eligible Trustee who elects to defer receipt of

[1] The Manager is an investment adviser to the Trust and serves in such capacity pursuant to a contract subject to section 15 of the Act. All registered open-end investment companies that currently intend to rely on the order have been named as applicants. Any other existing or future investment company that relies on the order will comply with the terms and conditions of the order.

fees will enter into an agreement with the Trust (''Agreement''). The election will continue in effect unless the Eligible Trustee delivers to the Trust a written modification of such election at least 60 days prior to January 1 in any given year. Pursuant to the Agreement, a bookkeeping account will be established by the Trust for each Eligible Trustee that elects to defer compensation (''Deferral Account''), and the amount of fees deferred will be credited to the Deferral Account. Although the Trust expects the Plan to remain in effect indefinitely, the Trust has reserved the right to unilaterally modify or terminate the Plan at any time. However, any modification or termination would not affect amounts already credited to an Eligible Trustee's Deferral Account.

6. In addition to deferred fees, the Trust will periodically credit to the Deferral Account interest in an amount equal to the interest rate credited to fixed income accounts under the Equitable Investment Plan for Employees, Managers, and Agents [2] (the ''Equitable Rate''). The Equitable Rate is a blended rate based on a weighted average of the separate interest rates payable under the Fixed Income Fund's various investments.[3] The Equitable Rate is adjusted periodically as GICs in the Fixed Income Fund mature and are reinvested at current rates and as the returns on the Fixed Income Fund's variable rate investments change. The amounts to be paid under the Plan will not depend upon, or in any way reflect, the investment performance of any Portfolio. In that regard, the Equitable Rate will merely be used as a reference the Trust believes to be fair in crediting interest to the Deferral Account.

7. The Trust has reserved the right to change the rate of interest credited to a Deferral Account (''Account Rate'') in accordance with changes that may be made periodically to the Equitable Rate.[4] The Trust need not change the Account Rate each time the Equitable Rate changes but it is the present intention of the Trust to do so only in accordance with the Equitable Rate. Instances when the Account rate would not be in accordance with the Equitable Rate would be (i) in any interim period between a change in the Equitable Rate and the time it takes to effectuate any change in the Account Rate, or (ii) if the Trustees determine that it is not in the best interests of the Trust's shareholders to change the Account Rate to the Equitable Rate.

8. An Eligible Trustee will specify a date for the initial disbursement of payments from the Deferral Account. The disbursement date may not be sooner than five years following the election of deferral, or the Eligible Trustee's anticipated retirement from the board. Payments will be made in a lump sum or in annual or semiannual installments for the number of years elected by the Eligible Trustee, or until the Deferral Account is exhausted. The Deferral Account will continue to be credited with interest during the payout period. Notwithstanding any elections, an Eligible Trustee's Deferral Account will be distributed (i) in the event of a Trustee's death, or (ii) upon the dissolution, liquidation, or transfer of all or substantially all of the Trust's assets. In the event of an Eligible Trustee's death, the amount of the Deferral Account will be paid to the Eligible Trustee's executors or administrators in a single lump sum distribution. In the event of a discontinuance of deferment or an Eligible Trustee's retirement, the Deferred Account will continue to be paid out in installments. The Trustees in their sole discretion may accelerate payments out of a Deferral Account at any time after termination of the Eligible Trustee's service, provided that the Eligible Trustee does not participate in the Trustees' determination.

9. The administrator of the Plan will maintain the Deferral Accounts. The amounts credited to an Eligible Trustee's Deferral Account will be payable solely from the Trust's general assets and will represent an unsecured obligation of the Trust. Eligible Trustees will have the status of general creditors. The Trust will not purchase any of its shares for any Deferral Account, nor will it create any specified fund or segregate any of its assets for purposes of the Plan. The Trust's liabilities for deferred fees are expected to be *de minimis* in relation to the Trust's net assets.

Applicants' Legal Analysis

1. Applicants request an order pursuant to (i) section 6(c) of the Act to exempt the Trust from the provisions of sections 13(a)(2), 18(f)(1), 22(f) and 22(g) to the extent necessary to permit the Trust to enter into deferred fee arrangements with the Eligible Trustees; and (ii) section 17(d) of the Act and rule 17d–1 thereunder to permit the Trust and the Eligible Trustees to effect certain transactions incident to the deferred fee arrangements.

2. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Act.

3. Section 18(f)(1) of the Act generally prohibits a registered open-end investment company from issuing senior securities. In addition, section 13(a)(2) of the Act requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan does not give rise to any of the concerns that prompted the enactment of sections 13(a)(2) and 18(f)(1). Applicants state that the Trust will not be borrowing from its Eligible Trustees, and all liabilities for deferred fees are expected to be *de minimis* in relation to the Trust's net assets. Applicants assert that the Plan will not induce speculative investments by the Trust or provide opportunity for manipulation of expenses and profits. In addition, applicants assert that the control of the Trust will not be affected, and the Plan will not confuse investors.

4. Section 22(f) prohibits restrictions on the transferability or negotiability of redeemable securities issued by an open-end investment company unless the restrictions are disclosed in its registration statement and do not contravene SEC rules and regulations. Applicants state that the Plan will plainly set forth the applicable restrictions against the assignment, commutation, and encumbrance of any amounts credited to a Deferral Account. Applicants assert that these restrictions are designed to benefit the Eligible Trustees and would not adversely affect

[2] The Equitable Investment Plan for Employees, Managers, and Agents (the ''Equitable Investment Plan'') is a tax-qualified profit-sharing plan that contains a cash-or-deferred arrangement. As administrator of the Equitable Investment Plan, Equitable's Officers Committee on Benefit Plans has authority to control and manage the Plan's operation and administration.

[3] The Fixed Income Fund is one of seven investment funds available to participants in the Equitable Investment Plan, and invests primarily in guaranteed investment contracts (''GICs'') issued by insurance companies and synthetic GICs managed by investment management firms. The Fixed Income Fund also invests in short-term securities to ensure the availability of adequate funds to cover participant transfers, withdrawals, and distributions.

[4] In addition, the Trust has reserved the right to use a different index for crediting interest.

the interests of the Eligible Trustees or the Trust's shareholders.

5. Section 22(g) generally prohibits registered open-end investment companies from issuing any of their securities for services or for property other than cash or securities. Applicants assert that the legislative history of section 22(g) was primarily concerned with the dilutive effect on the equity and voting power of common stock of, or units of beneficial interest in, an investment company if the company's securities are issued for consideration not readily valued. Applicants contend that the Plan does not raise these concerns because any rights issued under the Plan to Eligible Trustees will not be issued for services but in consideration for the Trust not being required to pay the fees on a current basis. In addition, applicants state that the Eligible Trustees' compensation arrangements, including the right to defer fees, will be described in the Trust's proxy statements.

6. Section 17(d) and rule 17d–1 prohibit affiliated persons from participating in joint arrangements with a registered investment company unless authorized by the SEC. In passing on applications for such orders, rule 17–d provides that the SEC will consider whether the participation of such investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants acknowledge that the Plan may be deemed to constitute a joint arrangement within the meaning of rule 17d–1. Applicants state that the Eligible Trustees will not share in any increase or decrease in the value of amounts retained by the Trust or otherwise participate in that investment experience. Except for accrued interest to be paid on Deferral Accounts, Eligible Trustees will receive the same fixed amounts that would have been received if fees were paid on a current basis. Therefore, applicants assert that the Trust's obligation to make payments to Trustees under the Plan will not be based upon a level of the Trust's income, its realized gains or losses on investments, or the unrealized appreciation or depreciation of its assets. Applicants believe that the selection of the Equitable Rate is inherently no different from the selection of a prime rate, the interest rate on U.S. Treasury Bills, or other assumed interest rates for fixed retirement type obligations. Thus, Applicants contend that the selection of the Equitable Rate as a convenient reference point does not represent a participation in the Equitable Investment Plan or in the performance of the Trust.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30297 Filed 11–18–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

HealthTech International, Inc.; Order of Suspension of Trading

November 17, 1997

It appears to the Securities and Exchange Commission that questions have been raised about the adequacy and accuracy of publicly-disseminated information about HealthTech International, Inc. concerning, among other things, its financial condition and acquisitions made by the company.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, November 17, 1997, through 11:59 p.m. EST, on December 1, 1997.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–30490 Filed 11–17–97; 11:37 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39320; File No. SR–MSRB–97–7]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board to Revise the Study Outline for the Board's Municipal Securities Principal Qualification Examination (Test Series 53)

November 12, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 16, 1997, the Municipal Securities Rulemaking Board (''Board or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–97–7). The proposed rule change is described in Items, I, II, and III below, which Items have been prepared by the Board. 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 MSRB is filing herewith a proposed rule change to revise the study outline for the Board's Municipal Securities Principal Qualification Examination, Test Series 53 (''Examination''). The Board requests that the Commission delay the effectiveness of the revised study outline until January 1, 1998, in order to provide time to modify the Examination to reflect the changes in the study outline and for information concerning the revised outline to be circulated to the industry.

II. Self-Regulatory Organization's Statement of The Terms of Substance of The Proposed Rule Change

In its filing with the Commission, the Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Examination is the only examination a candidate may take to qualify as a municipal securities principal. A municipal securities principal manages, directs or supervises the municipal securities activities of a broker, dealer or municipal securities dealer. Specific subjects and questions have been updated from time to time in the Examination to reflect changes in Board rules or applicable federal regulation. The Board's Professional Qualification Advisory Committee (''PQAC'')[1] determined that the content

[1] PQAC is composed of the Representative Examination Subcommittee and the Principal

Continued

of the study outline should be revised to reflect additions to and changes in Board rules since the outline was last revised. The revised outline also provides for the inclusion of new Board rules as they are promulgated.

Treatment of the following existing Board rules has changed in the revised study outline:

- Rule G–3 on professional qualifications.
- Rule G–8 on books and records.
- Rule G–23 on activities of financial advisors.
- Rule G–34 on CUSIP numbers and new issue requirements.
- Rule G–37 on political contributions and prohibitions on municipal securities business.
- Rule G–38 on consultants.
- Rule G–39 on telemarketing.

The test specifications for the Examination have not been changed, and it will remain a three-hour 100 question examination administered by National Association of Securities Dealers Regulation, Inc. (''NASDR'') using the PROCTOR system.

Examinations administered after January 1, 1998 will include an exhibits book, which is a compilation of materials (*e.g.,* syndicate agreement, trade blotter) that a principal might employ in the conduct of his job responsibilities, and will be used to answer certain questions.

2. Statutory Basis

It is the Board's responsibility under Section 15B(b)(2)(A) of the Act, to propose and adopt rules which

provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce the purchase or sale of, any municipal security unless * * * such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meets such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors.

Section 15B(b)(2)(A) of the Act also provides that the Board may appropriately classify municipal securities brokers and municipal securities dealers and their associated personnel and require persons in any such class to pass tests prescribed by the Board.

Examination Subcommittee. The subcommittees are composed of individuals with extensive experience in the securities industry. The committee members are employed by securities firms and bank dealers and come from diverse geographic locations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the Commission for its review at least five days prior to the filing date; and (iv) does not become operative for thirty (30) days from the date of its filing on October 16, 1997, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes the proposed rule change qualifies as a ''non-controversial filing'' in that the proposed Standards do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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, NW., Washington, DC 20549. Copies of the submissions, 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 the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–97–7 and should be submitted by December 10, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30340 Filed 11–18–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 27–1A, Certification of Normal Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance and availability.

SUMMARY: Advisory Circular (AC) 27–1A, Certification of Normal Category Rotorcraft, is a total revision of AC 27–1 dated August 29, 1985, with changes 1, 2, 3, and 4 dated September 16, 1987, April 24, 1989, September 12, 1991, and August 18, 1995, respectively, incorporated. In addition, new material plus changes to existing paragraphs have been incorporated to bring the AC up-to-date with various rule changes to 14 CFR Part 27. As part of the FAA effort to achieve national standardization in rotorcraft certification, the AC serves as a ready reference for manufacturers, modifiers, FAA design evaluation engineers, flight test engineers, and engineering flight test pilots and has been harmonized with the Joint Aviation Authority (JAA) to establish common guidance for the U.S. and for JAA member nations. The AC material has no legally binding status and must be treated as advisory only.

DATES: AC 27–1A was issued by the Rotorcraft Directorate, Aircraft Certification Service, on July 30, 1997.

How to Order: A copy of AC 27–1A may be purchased from the Superintendent of Documents, Mail Stop: SSOP, U.S. Government Printing Office, Washington, DC 20402, or from any of the Government Printing Offices located in major cities throughout the United States. Identify the publication as AC 27–1A, Certification of Normal Category Rotorcraft, Stock Number 050–007–01186–5. The cost is $57.00 per copy for orders mailed within the U.S. and $71.25 for orders mailed outside of

the U.S. Send a check or money order, made payable to Superintendent of Documents, with your request. Requests may also be made by calling the Government Printing Office at 202–512–1800. No c.o.d. orders are accepted.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Jones, FAA, Rotorcraft Standards Staff, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193–0110, telephone (817) 222–5359, fax (817) 222–5961.

Issued in Fort Worth, Texas, on November 7, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–30359 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 20–2B, Certification of Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance and availability.

SUMMARY: Advisory Circular (AC) 29–2B, Certification of Transport Category Rotorcraft, is a total revision of AC 29–2A dated September 16, 1987, with changes 1, 2, and 3, dated April 24, 1989, September 24, 1991, and June 1, 1995, respectively, incorporated. In addition, new material plus changes to existing paragraphs have been incorporated to bring the AC up-to-date with various rule changes to 14 CFR Part 29. As part of the FAA effort to achieve national standardization in rotorcraft certification, the AC serves as a ready reference for manufacturers, modifiers, FAA design evaluation engineers, flight test engineers, and engineering flight test pilots and has been harmonized with the Joint Aviation Authority (JAA) to establish common guidance for the U.S. and for JAA member nations. The AC material has no legally binding status and must be treated as advisory only.

DATES: AC 29–2B was issued by the Rotorcraft Directorate, Aircraft Certification Service, on July 30, 1997.

How to Order: A copy of AC 29–2B may be purchased from the Superintendent of Documents, Mail Stop: SSOP, U.S. Government Printing Office, Washington, DC 20402, or from any of the Government Printing Offices located in major cities throughout the United States. Identify the publication as AC 29–2B, Certification of Transport Category Rotorcraft, Stock Number 050–007–01187–3. The cost if $63.00 per copy for orders mailed within the U.S. and $78.75 for orders mailed outside of the U.S. Send a check or money order, made payable to Superintendent of Documents, with your request. Requests may also be made by calling the Government Printing Office at 202–512–1800. No c.o.d. orders are accepted.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Jones, FAA, Rotorcraft Standards Staff, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193–0110, telephone (817) 222–5359, fax (817) 222–5961.

Issued in Fort Worth, Texas, on November 7, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–30358 Filed 11–18–97; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 97–12]

Information Collection Activities

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA invites comments on certain information collections pertaining to hazardous materials transportation for which RSPA intends to request renewal from the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before January 20, 1998.

ADDRESSES: Address written comments to the Dockets Unit (DHM–30), Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW, Washington, DC 20590–0001. Comments may also be submitted by e-mail to: rules @ rspa.dot.gov, or faxed to (202) 366–3753. Comments should identify the Notice number (97–12) and the appropriate Office of Management and Budget (OMB) Control Number(s). Mailed written comments should be submitted in two copies. Persons wishing to receive confirmation of receipt of their mailed written comments should include a self-addressed, stamped postcard showing the Notice number. Public information may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Requests for a copy of an information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collections that RSPA is submitting to OMB for renewal and extension. These collections are contained in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). RSPA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. RSPA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register**.

RSPA requests comments on the following information collections:

Title: Hazardous Materials Shipping Papers and Emergency Response Information (Former Title: Hazardous Materials Shipping Papers).

OMB Control Number: 2137–0034.

Summary: Shipping papers and emergency response information are a basic communication tool used in the safe transportation of hazardous materials. They serve as a principal means of identifying hazardous materials during transportation, including emergencies, by providing the proper shipping name, hazard class, UN identification number, packing group, and quantity of each hazardous material

being transported. Shipping papers also provide emergency response information for use in the mitigation of an incident, and an emergency response telephone number for use in the event of an emergency. The telephone number must be monitored at all times the hazardous material is in transportation, by a person who is either knowledgeable of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information. Shipping papers also serve as a means of notifying transport workers that hazardous materials are present, so that the proper loading, unloading, handling and safety procedures may be followed. This information collection renewal includes new requirements for: shippers and carriers to retain shipping papers for one year as mandated by Section 5110(e) under the Federal hazardous material transportation law; compliance with the HMR by intrastate shippers and carriers, published under Docket HM–200, ''Hazardous Materials in Intrastate Commerce; Final Rule'', on January 8, 1997 (62 FR 1108); and the President's initiative to reduce the regulatory burdens imposed by the Federal government.

Affected Public: Shippers and carriers of hazardous materials in intrastate, interstate, and foreign commerce.

Annual Reporting and Recordkeeping: Number of Respondents: 250,000.

Total Annual Responses: 260,000,000.

Total Annual Burden Hours: 6,500,000.

Frequency of collection: On occasion.

Title: Radioactive Materials (RAM)Transportation Requirements.

OMB Control Number: 2137–0510.

Summary: The requirements for transportation of RAM are provided in 49 CFR parts 171–180. Information collection requirements for RAM include shipper notification to consignees of the dates of shipment of RAM, expected arrival, special loading/unloading instructions; verification that shippers using foreign-made packages hold a foreign competent authority certificate and verification that the terms of the certificate are being followed for RAM shipments being made into this country; and specific handling instructions from shippers to carriers for fissile RAM, bulk shipments of low specific activity RAM and packages of RAM which emit high levels of external radiation. These information collection requirements help to establish that proper packages are used for the type of radioactive material being transported, external radiation levels do not exceed prescribed limits, packages are handled appropriately and delivered in a timely manner, so as to ensure the safety of the general public, transport workers and emergency responders. This information collection has been adjusted to reflect program changes regarding responsibility for the routing of highway controlled quantities of radioactive materials.

Affected Public: Shippers and carriers of radioactive materials.

Annual Reporting and Recordkeeping: Number of Respondents: 3,807.

Total Annual Responses: 21,319.2.

Total Annual Burden Hours: 14,480.

Frequency of collection: On occasion.

Issued in Washington, DC on November 14, 1997.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 97–30352 Filed 11–18–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–35: OTS No. 00770]

First Federal Savings and Loan Association of Cheraw, Cheraw, South Carolina, Approval of Conversion Application

Notice is hereby given that on November 12, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Cheraw, Cheraw, South Carolina, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, N.E., Atlanta, GA 30309.

Dated: November 14, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–30381 Filed 11–18–97; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Gulf War Expert Scientific Advisory Committee, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act, as amended (Pub. L. 92–463; 5 U.S.C. App.), that the Department of Veterans Affairs' Gulf War Expert Scientific Advisory Committee (formerly named Persian Gulf Expert Scientific Committee) has been renewed for a 2-year period beginning November 10, 1997, through November 10, 1999.

Dated: November 12, 1997.

By Direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–30401 Filed 11–18–97; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday
November 19, 1997

Part II

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of proposed actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: This notice sets forth proposed actions to be taken under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, 60 FR 20726, 61 FR 1482, 61 FR 10004, 62 FR 4782, 62 FR 53335, 62 FR 56196, 62 FR 59032). Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on December 15–16, 1997, along with the proposed actions published in the **Federal Register** on October 16, 1997 (62 FR 53908). After consideration of these proposals and comments by the RAC, the NIH Director will issue decisions in accordance with the NIH Guidelines.

DATES: Interested parties are invited to submit comments concerning the proposed actions. Comments received by December 8, 1997, will be reproduced and distributed to the RAC for consideration at its December 15–16, 1997, meeting. After consideration of this proposal and comments by the RAC, the NIH Director will issue decisions in accordance with the NIH Guidelines.

ADDRESSES: Written comments and recommendations should be submitted to Debra Knorr, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839.

All comments received in response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. The Office of Recombinant DNA Activities web site is located at http://www.nih.gov/od/orda for further information about the office.

I. Proposed Actions Regarding Amendments to the NIH Guidelines

The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines):

I–A. Amendment to Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, Under the NIH Guidelines Regarding Deadline for Submission for RAC Review

On November 12, 1997, Dr. Scott McIvor, a member of the Recombinant DNA Advisory Committee (RAC), requested a proposed action regarding the deadline for submission of human gene transfer protocols that will require public discussion at the RAC meetings.

To give the RAC sufficient time to review the protocols and the investigators to respond to primary reviewer's written comments, Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, of the NIH Guidelines, is proposed to be amended to include a statement regarding the submission deadline. Submission material will be accepted by NIH/ORDA at any time. However, if a protocol is recommended for full RAC review, the submission material must be received in NIH/ORDA a minimum of eight weeks prior to the next scheduled RAC meeting.

Appendix M–I is proposed to read:

''Appendix M–I. Submission Requirements—Human Gene Transfer Experiments

''Investigators must submit the following material to the Office of Recombinant DNA Activities, National Institutes of Health/MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, (301) 496–9838 (see exemption in Appendix M–VIII–A, Footnotes of Appendix M). Proposals shall be submitted to NIH/ORDA in the following order: (1) Scientific abstract; (2) non-technical abstract; (3) Institutional Biosafety Committee and Institutional Review Board approvals and their deliberations pertaining to your protocol (Instutitional Biosafety Committee approval must be obtained from each institution at which recombinant DNA material will be administered to human subjects (as opposed to each institution involved in the production of vectors for human application and each institution at which there is ex vivo transduction of recombinant DNA material into target cells for human application)); (4) Responses to Appendix M–II through M–V. Description of the Proposal, Informed Consent, Privacy and Confidentiality, and Special Issues (the pertinent responses can be provided in the protocol or as an appendix to the protocol); (5) clinical protocol (as approved by the local Institutional Biosafety Committee and Institutional Review Board); (6) Informed Consent Document—approved by the Institutional Review Board (see Appendix M–III, Informed Consent); (7) appendices (including tables, figures, and manuscripts); and (8) curricula vitae—2 pages for each key professional person in biographical sketch format. Investigational New Drug (IND) applications shall be submitted to FDA in the format described in 21 CFR, Chapter I, Subchapter D, Part 312, Subpart B, Section 23, IND Content and Format. Submissions to FDA should be sent to the Division of Congressional and Public Affairs, Document Control Center, HFM–99, Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, Maryland 20852–1448.

''**Note:** Submission material will be accepted by NIH/ORDA at any time. However, if a protocol is recommended for full RAC review, the submission material must be received in NIH/ORDA a minimum of eight weeks prior to the next scheduled RAC meeting.''

I–B. Amendment to Appendix K, Physical Containment for Large Scale Uses of Organisms Containing Recombinant DNA Molecules, of the NIH Guidelines

In a letter dated November 5, 1997, Gerard J. McGarrity, Ph.D., Senior Vice President for Development, Genetic Therapy, Inc., Gaithersburg, Maryland, requested amendments to Appendix K, Physical Containment for Large Scale of Uses of Organisms Containing Recombinant DNA Molecules, of the NIH Guidelines to clarify the containment requirements for large scale production of viral vectors for gene therapy. The letter states that:

''The purpose of this correspondence is to point out a section of Appendix K of the NIH Guidelines (January 1997) that requires clarification for large scale production of viral vectors for gene therapy.

''Appendix K specifies containment guidelines for research or production material that exceed 10 liters in volume. Each of the large scale (LS) biosafety levels (BL): Good Large Scale Production (GLSP), BL1/LS (Appendix K–III–C), BL2/LS (Appendix K–IV–C) and BL3/LS (Appendix K–V–C) specify the requirements that:

'Culture fluids (except as allowed by Appendix K–III–D, K–IV–D, K–V–D) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure.'

''Related language addresses the primary containment equipment:

'A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure.' (Sections K–III–F, K–IV–F and K–V–F)

''As its title (Physical Containment for Large Scale Uses of Organisms Containing

Recombinant DNA Molecules) indicates. Appendix K was written to deal with prokaryotic and eukaryotic cells that elaborate proteins expressed by recombinant DNA molecules. It was not intended for the production of viral vectors used in gene therapy. If fact, adherence to sections K–III–C, K–IV–C, or K–V–C is incompatible with the production and harvest of viral vectors in volumes larger than 10 liters as active viral vectors must be removed from the equipment. Clearly, this was not the purpose of Appendix K.

''Several possible solutions exist. First, Section III–D–6 of the Guidelines, 'Experiments Involving More Than 10 Liters Of Culture,' states:

'The appropriate containment will be decided by the Institutional Biosafety Committee. Where appropriate, Appendix K, Physical Containment for Large Scale Uses of Organisms Containing Recombinant DNA Molecules, shall be used.'

''We interpret this to mean that for production of viral vectors, the IBC has the authority to establish the specifics of large scale containment, using the principles described in Appendix K. For harvesting of supernatant fluids that contain the viral vector product, the IBC can establish practices and facilities which are consistent with the objectives and spirit of the NIH Guidelines.

''In this regard, Genetic Therapy, Inc., has adhered to Section III–D–6 in the establishment of facilities and practices for large scale production of retroviral vectors to the extent that Sections can be applied to viral vectors. These have included the practices for the appropriate large scale biosafety level except for the requirement to inactivate the culture fluids and to sterilize the primary containment equipment prior to opening the primary containment equipment and removing the culture fluids. These practices have been approved by our IBC.

''A second possible solution is to limit volumes to less than 10 liters. However, this will be impractical for commercial purposes. Third, the Guidelines can be modified to address the requirements for large scale production of viral vectors for gene therapy.

''For the longer term, we believe it is most appropriate to revise the relevant portions of Appendix K to enable application of large scale to viral vectors. We request that RAC address this issue and propose the following language be added to the end of Section K–III–C, K–IV–C and K–V–C of Appendix K:

'Culture fluids that contain viable organisms or viral vectors intended as final product may be removed from the primary containment equipment by way of closed systems for sample analysis, further processing or final fill.'

''We propose the following language be added to the end of the first sentence of Sections K–III–F, K–IV–F and K–V–F:

'* * * except when the culture fluids contain viable organisms or vectors intended as final product as described in Section K–III–C (or K–IV–C or K–V–C respectively) above.'

''We believe these additions maintain the original concept of Appendix K while addressing the needs of specific product types.''

Appendix K–III–C is proposed to read:

''Appendix K–III. Biosafety Level (BL1)—Large Scale

''Appendix K–III–C. Culture fluids (except as allowed in Appendix K–III–D) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules. Culture fluids that contain viable organisms or viral vectors intended as final product may be removed from the primary containment equipment by way of closed systems for sample analysis, further processing or final fill.''

Appendix K–III–F is proposed to read:

''Appendix K–III–F. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purpose unless it has been sterilized by a validated sterilization procedure except when the culture fluids contain viable organisms or vectors intended as final product as described in Section K–III–C above. A validated sterilization procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules.''

Appendix K–IV–C is proposed to read:

''Appendix K–IV. Biosafety Level 2 (BL2)—Large Scale

''Appendix K–IV–C. Culture fluids (except as allowed in Appendix K–IV–D) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organism that will serve as the host for propagating the recombinant DNA molecules. Culture fluids that contain viable organisms or viral vectors intended as final product may be removed from the primary containment equipment by way of closed systems for sample analysis, further processing or final fill.''

Appendix K–IV–F is proposed to read:

''Appendix K–IV–F. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure except when the culture fluids contain viable organisms or vectors intended as final product as described in Section K–IV–C above. A validated sterilization procedure is one which has been demonstrated to be effective using the organisms that will serve as the host for propagating the recombinant DNA molecules.''

Appendix K–V–C is proposed to read:

''Appendix K–V. Biosafety Level 3 (BL3)—Large Scale

''Appendix K–V–C. Culture fluids (except as allowed in Appendix K–V–D) shall not be removed from a closed system or other primary containment equipment unless the viable organisms containing recombinant DNA molecules have been inactivated by a validated inactivation procedure. A validated inactivation procedure is one which has been demonstrated to be effective using the organisms that will serve as the host for propagating the recombinant DNA molecules. Culture fluids that contain viable organisms or viral vectors intended as final product may be removed from the primary containment equipment by way of closed systems for sample analysis, further processing or final fill.''

Appendix K–V–F is proposed to read:

''Appendix K–V–F. A closed system or other primary containment equipment that has contained viable organisms containing recombinant DNA molecules shall not be opened for maintenance or other purposes unless it has been sterilized by a validated sterilization procedure except when the culture fluids contain viable organisms or vectors intended as final product as described in Section K–V–C above. A validated sterilization procedure is one which has been demonstrated to be effective using the organisms that will serve as the host for propagating the recombinant DNA molecules.''

I–C. Amendment to Section III–D–6, Experiments Involving More Than 10 Liters of Culture, of the NIH Guidelines

In a letter dated November 6, 1997, Richard A. Knazek, Medical Officer, Clinical Research, National Center for Research Resources, NIH, requested an amendment to Section III–D–6, Experiments Involving More Than 10 Liters of Culture, of the NIH Guidelines. Dr. Knazek proposed an addition of a statement, ''When more than 10 Liters of culture media is to be produced within a GMP-accredited facility for subsequent clinical use, the level of appropriate containment shall be determined by the Institutional Biosafety Committee (IBC) affiliated with the institution where the investigator will perform the clinical manipulation of the vector.'' Dr. Knazek stated the rationale of his request as follows:

''The purpose of this amendment is to prevent an additional layer of bureaucracy from impeding the implementation of an appropriately reviewed and approved gene therapy protocol.

''The risks due to exposure to a gene vector will be greatest at the time when the final media product is either incubated with the target cells (ex vivo transduction) and/or

infused into the recipient (in vivo transduction). The IBC at that clinical institution bears the responsibility of being knowledgeable about attendant risks to the investigator, laboratory and medical personnel, patient and the environment.

''While being produced within a qualified GMP facility, the vector is, by definition, both protected from the environment and prevented from escaping into the environment.

''Clearly, the vector and its proposed use must be scrutinized by an IBC. However, the IBC review of the vector and its protocol is most appropriately performed at the clinical site rather than at the GMP facility. Review by more than one IBC would be redundant.''

Section III–D–6 is proposed to read:

''Section III–D. Experiments That Require Institutional Biosafety Committee Approval Before Initiation

''Section III–D–6. Experiments Involving More than 10 Liters of Culture. The appropriate containment will be decided by the Institutional Biosafety Committee. Where appropriate, Appendix K, Physical Containment for Large Scale Uses of Organisms Containing Recombinant DNA Molecules, shall be used. Appendix K describes containment conditions Good Large Scale Practice through BL3–Large Scale. When more than 10 Liters of culture media is to be produced within a GMP-accredited facility for subsequent clinical use, the level of appropriate containment shall be determined by the IBC affiliated with the institution where the investigator will perform the clinical manipulation of the vector.''

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: November 12, 1997.

Lana R. Skirboll,

Associate Director for Science Policy, National Institutes of Health.

[FR Doc. 97–30321 Filed 11–18–97; 8:45 am]

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Federal Register

Wednesday
November 19, 1997

Part III

Securities and Exchange Commission

17 CFR Parts 275 and 279

Exemption for Investment Advisers Operating in Multiple States; Revisions to Rules Implementing Amendments to the Investment Advisers Act of 1940; Proposed Rule

17 CFR Part 275

Exemption to Allow Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–1681, File No. S7–28–97]

RIN 3235–AH22

Exemption for Investment Advisers Operating in Multiple States; Revisions to Rules Implementing Amendments to the Investment Advisers Act of 1940

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is publishing for comment under the Investment Advisers Act of 1940 rule amendments to exempt multi-state investment advisers from the prohibition on Commission registration and two alternative amendments to revise the definition of the term ''investment adviser representative.'' The Commission is proposing these amendments to refine the rules implementing the Investment Advisers Supervision Coordination Act.

DATES: Comments must be received on or before January 20, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–28–97; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Carolyn-Gail Gilheany, Attorney, or Jennifer S. Choi, Special Counsel, at (202) 942–0716, Task Force on Investment Adviser Regulation, Division of Investment Management, Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed amendments to rule 203A–2 [17 CFR 275.203A–2], rule 203A–3 [17 CFR 275.203A–3], rule 206(4)–3 [17 CFR 275.206(4)–3] and Schedule I to Form ADV [17 CFR 279.1] under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*] (''Advisers Act''). The Commission also is proposing to withdraw rule 203A–5 [17 CFR 275.203A–5] and Form ADV–T [17 CFR 279.3] under the Advisers Act.

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Executive Summary

Section 203A of the Advisers Act generally prohibits an investment adviser from registering with the Commission unless it has more than $25 million of assets under management or is an adviser to a registered investment company. Section 203A also preempts most state regulatory requirements for Commission-registered investment advisers and their supervised persons except for certain ''investment adviser representatives.'' The Commission is proposing an exemption from the prohibition on Commission registration for advisers required to register as an investment adviser in 30 or more states. The Commission also is proposing two alternative amendments to the definition of investment adviser representative. Under the current definition, supervised persons of Commission-registered investment advisers will not be subject to state qualification requirements if no more than ten percent of their clients are natural persons (''ten percent allowance''). The Commission is proposing either (1) to add a provision that would permit supervised persons to have the greater of five natural person clients or the number of natural person clients permitted under the ten percent allowance, or (2) to eliminate the ten percent allowance and permit supervised persons to have an unlimited number of accommodation clients who have certain business or familial relationships with the supervised person or the supervised person's business or institutional clients.

I. Background

Last year, Congress enacted the National Securities Markets Improvement Act of 1996 (''1996 Act'').[1] Title III of the 1996 Act, the Investment Advisers Supervision Coordination Act (''Coordination Act''), amended the Advisers Act by reallocating federal and state responsibilities for regulation of investment advisers. By limiting federal registration and preempting certain state laws, the Coordination Act divided regulatory responsibilities for the approximately 23,350 investment advisers that were registered with the Commission.[2] The Coordination Act became effective on July 8, 1997.

Under new section 203A(a) of the Advisers Act,[3] an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the Commission unless the investment adviser (i) has at least $25 million of assets under management, or (ii) is an investment adviser to an investment company registered under the Investment Company Act of 1940 (''Investment Company Act'').[4] Section 203A(b) of the Advisers Act generally preempts state law with respect to Commission-registered investment advisers.[5]

On May 15, 1997, the Commission adopted new rules and rule

[1] Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

[2] Other amendments made by the 1996 Act to the Advisers Act include revisions to (i) section 205 [15 U.S.C. 80b–5] to create additional exceptions to the Advisers Act's limitations on performance fee arrangements, (ii) section 222 [15 U.S.C. 80b–18a] to impose certain uniformity requirements on state investment adviser laws, (iii) section 203(e) [15 U.S.C. 80b–3(e)] to permit the Commission to deny or revoke the registration of any person convicted of any felony (or any person associated with such investment adviser), and (iv) section 203(b) [15 U.S.C. 80b–3(b)] to exempt from registration certain advisers to church employee pension plans. *See* sections 210, 304, 305(a), and 508(d) of the 1996 Act.

[3] 15 U.S.C. 80b–3a(a).

[4] The Commission has authority to deny registration to any applicant that does not meet the criteria for Commission registration and to cancel the registration of any adviser that no longer meets the registration criteria. Section 203(c) and (h) of the Advisers Act [15 U.S.C. 80b–3(c) and (h)].

[5] 15 U.S.C. 80b–3a(b). In addition, state law is preempted with respect to advisers that are excepted from the definition of investment adviser under section 202(a)(11) of the Advisers Act [15 U.S.C. 80b–2(a)(11)].

amendments to implement the Coordination Act.[6] These implementing rules included rules that exempt four types of investment advisers from the statutory prohibition on Commission registration and define certain terms used in the Coordination Act.[7] In adopting these rules, the Commission anticipated that experience with the new regulatory scheme might reveal the need for additional rules or further refinement of existing rules. Based on its experience, the Commission is proposing to exempt multi-state investment advisers from the prohibition on Commission registration, to amend the definition of investment adviser representative, and to clarify certain other implementing rules.

II. Discussion

A. Multi-State Investment Adviser Exemption from Prohibition on Registration with the Commission

As discussed above, section 203A of the Advisers Act limits registration with the Commission, in most cases, to investment advisers with at least $25 million of assets under management and preempts state law with respect to these investment advisers.[8] The $25 million threshold was designed to allocate regulatory responsibility to the Commission for larger investment advisers whose activities are likely to affect national markets and to relieve them of the burdens imposed by multiple state regulation.[9] Congress recognized, however, that there may be investment advisers with less than $25 million of assets under management that have national businesses and for which multiple state registration would be burdensome.[10] Therefore, the Commission was given authority in section 203A(c) of the Advisers Act to exempt investment advisers, by rule or order, from the prohibition on Commission registration if the prohibition would be ''unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes'' of section 203A.[11]

Pursuant to its authority, the Commission adopted rule 203A–2, which permits Commission registration for nationally recognized statistical rating organizations and certain pension consultants, affiliated investment advisers, and newly formed investment advisers with reasonable expectations that they would soon become eligible for Commission registration.[12] The Commission also, by order, has granted exemptive relief to investment advisers that do not have $25 million of assets under management but have a national or multi-state practice and conduct advisory activities that require them to register as investment advisers in 30 or more states.[13] The Commission is proposing to amend rule 203A–2 to codify the exemptions provided by individual orders to investment advisers required to be registered in multiple states.

Under the proposed exemption, an investment adviser required to be registered as an investment adviser with 30 or more state securities authorities would be permitted to register with the Commission.[14] The Commission believes that an investment adviser whose activities trigger registration requirements in 30 states is a national firm and that the multiple state registration requirements for such a firm would constitute a burden on interstate commerce. For that reason, the Commission believes that such an investment adviser would be the type of firm for which Congress expected the Commission to exercise its section 203A(c) exemptive authority and, as a result, would have a single, national regulator.[15]

Under the proposed rule amendments, an adviser applying for registration relying on the exemption would be required to submit a representation that the investment adviser has reviewed its obligations under state law and concluded that it is required to register as an investment adviser with the securities authorities of at least 30 states.[16] Once registered with the Commission, the investment adviser would continue to be eligible for the exemption as long as it is annually able to provide a representation that the investment adviser has determined that, but for the exemption, it would be obligated to register in at least 25 states, five fewer states than when it initially registered.[17] The Commission is proposing this five-state difference to prevent an investment adviser registered with the Commission from losing the exemption simply because, for example, it lost a few clients in a small number of states.[18]

Like other exemptions in rule 203A–2, the proposed multi-state exemption

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[6] Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) [62 FR 28112 (May 22, 1997)] (''Adopting Release'').

[7] *Id.* The Commission also amended several rules under the Advisers Act to reflect the changes made by the 1996 Act.

[8] Section 203A(a) and (b). Notwithstanding section 203A(b), states retain authority over Commission-registered advisers under state investment adviser statutes to: (1) investigate and bring enforcement actions with respect to fraud or deceit against an investment adviser or a person associated with an investment adviser; (2) require filings, for notice purposes only, of documents filed with the Commission; and (3) require payment of state filing, registration, and licensing fees. Moreover, section 203A(b) specifically preserves state law with respect to investment adviser representatives of Commission-registered advisers who have a place of business in the state. *See infra* section II.B of this Release.

[9] *See* S. Rep. No. 293, 104th Cong., 2d Sess. 3–5 (1996) [hereinafter Senate Report].

[10] *Id.* at 5.

[11] Section 203A(c) [15 U.S.C. 80b–3a(c)].

[12] 17 CFR 275.203A–2.

[13] *See* Arthur Andersen Financial Advisers, Investment Advisers Act Release Nos. 1637 (June 16, 1997), 62 FR 33689 (Notice of Application), 1642 (July 8, 1997), 64 SEC Docket 2417 (Order); Ernst & Young Investment Advisers LLP, Investment Advisers Act Release Nos. 1638 (June 16, 1997), 62 FR 33692 (Notice of Application), and 1641 (July 8, 1997), 64 SEC Docket 2416 (Order); and KPMG Investment Advisors, Investment Advisers Act Release Nos. 1639 (June 17, 1997), 62 FR 33945 (Notice of Application), and 1643 (July 8, 1997), 64 SEC Docket 2418 (Order).

[14] In tallying the number of states in which an adviser is required to register, the investment adviser would be required to exclude those states in which it is not required to register because of applicable state laws or the national de minimis standard of section 222(d) of the Advisers Act. [15 U.S.C. 80b–18a] The Commission believes such an exclusion is appropriate because it is the obligation to register in a state, rather than the business decision to register voluntarily, that demonstrates that the adviser is subject to the type of burden contemplated by the exemption.

[15] *See* Senate Report at 5 (Congress recognized that the ''definition of 'assets under management' * * * may, in some cases, exclude firms with a national or multistate practice from being able to register with the SEC'').

[16] Proposed paragraph (e)(2) of rule 203A–2. At the time of its application for registration with the Commission, the investment adviser would be required to include on Schedule E to Form ADV an undertaking to withdraw from registration with the Commission if it would no longer be required to register in at least 25 states at the time of filing Schedule I. The exemption would require an investment adviser that indicates that it is no longer required to register in at least 25 states to withdraw from Commission registration by filing Form ADV-W within 90 days of filing Schedule I. Proposed paragraph (e)(3) of rule 203A–2.

[17] This representation must be attached to the investment adviser's annual amendment to Form ADV revising Schedule I. Proposed paragraph (e)(2) of rule 203A–2. Under the proposed multi-state exemption, the investment adviser also would be required to maintain a record of the states that the adviser believes it would, but for the exemption, be required to register. Proposed paragraph (e)(4) of rule 203A–2.

[18] This ''five-state difference'' is similar to the ''$5 million window,'' which makes Commission registration optional for an adviser having between $25 and $30 million of assets under management. *See* rule 203A–1(a), (b) [17 CFR 275.203A–1(a), (b)]. The Commission adopted the $5 million window to avoid transient registration problems that could occur because of a small decrease in the value of client assets (as a result of a market decline) or the departure of one or a few clients. *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1601 (Dec. 20, 1996) [61 FR 68480 (Dec. 27, 1996)] (''Proposing Release''). Under the proposed five-state difference, an investment adviser registered with the Commission in reliance upon the multi-state exemption would not be required to de-register and then re-register with the Commission frequently as a result of a change in registration obligation in one or a few states.

could be used by a newly formed investment adviser in conjunction with the ''start-up adviser'' exemption in paragraph (d) of the rule.[19] A newly formed investment adviser not registered in any state could register with the Commission if it reasonably expected that it would be required to register in 30 or more states within 120 days. After the 120-day period, the investment adviser would be required to file an amendment to Form ADV revising Schedule I and attach a representation that, but for the proposed multi-state exemption, the investment adviser would be required to register in at least 25 states.[20]

Comment is requested whether the 30 state threshold should be increased or decreased and whether the five-state difference is sufficient to prevent transient registration problems. Because determining the obligations to register under state law requires a legal analysis, should the Commission require investment advisers to represent that counsel has reviewed the applicable state and federal laws and has concluded that the investment adviser qualifies for the proposed multi-state exemption? Should the Commission prohibit a newly formed investment adviser from using this exemption in conjunction with the reasonable expectation exemption?

B. Definition of Investment Adviser Representative

The Coordination Act preempts most state regulatory requirements for Commission-registered investment advisers and their supervised persons,[21] but permits states to continue to license, register, or otherwise qualify an ''investment adviser representative'' who has a place of business in the state.[22] In rule 203A–3(a), the Commission defined investment adviser representative as a supervised person more than ten percent of whose clients are natural persons other than excepted persons.[23]

1. Accommodation Clients

The ''ten percent allowance'' in the definition of investment adviser representative was designed to permit supervised persons who provide advisory services principally to clients other than natural persons to continue to accept so-called ''accommodation clients'' without being subject to state qualification requirements.[24] In adopting the ten percent allowance, the Commission acknowledged that the allowance may pose a problem for supervised persons with one or a few institutional clients who would not be able to have any accommodation clients.[25] To have one accommodation client, a supervised person would need to have at least ten clients that are not natural persons. Therefore, the Commission directed the staff to work with investment advisers whose supervised persons would be affected by the definition to develop a workable method of addressing this concern and indicated that it may propose revisions to the definition.[26] The Commission staff has consulted with members of the industry for their views and has recommended proposals to the Commission to resolve this issue.

The Commission is now proposing two alternative amendments to the definition of investment adviser representative to allow supervised persons who provide services to one or a few institutional or business client accounts to continue to have accommodation clients without being subject to state qualification requirements. Under the first alternative, the Commission proposes to retain the ten percent allowance and add a provision that would permit supervised persons to have up to five natural person clients. Supervised persons could have under the first alternative the greater of five natural person clients or the number of natural person clients permitted under the ten percent allowance without being subject to state qualification requirements.

The first alternative would allow supervised persons with one or a few institutional or business clients to accept at least five natural person clients and would address the problem with the current rule. Moreover, this alternative would provide a simple, bright-line test for supervised persons to determine when they are subject to state qualification requirements. The disadvantage of this alternative, however, is that the five clients may not necessarily be limited to those clients who the supervised person advises on an accommodation basis; the proposed five natural person minimum could include natural persons who have no relationship to an investment adviser's institutional or business clients. Furthermore, the five natural person minimum would permit supervised persons who have only retail clients (*i.e.,* natural person clients) to avoid state qualification requirements until they obtained their sixth client. The provision, however, likely would have a small effect on the number of supervised persons who would not be subject to state qualification requirements because many states do not require supervised persons to register in the state until they have more than five clients in their respective state.[27]

Under the second alternative, supervised persons who have natural person clients would be excluded from the definition of investment adviser representative if the natural person clients either are ''high net worth'' clients or have a familial or business relationship with the supervised person or his business or institutional clients.[28]

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[19] 17 CFR 275.203A–2(d).

[20] These requirements would be the result of the conditions for the exemptions provided by rule 203A–2(d) and proposed paragraph (e) of rule 203A–2.

[21] The term supervised person is defined in the Advisers Act as any ''partner, officer, director . . . or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.'' Section 202(a)(25) of the Advisers Act [15 U.S.C. 80b–2(a)(25)].

[22] Section 203A(b).

[23] 17 CFR 275.203A–3(a). The rule defines ''excepted persons'' as natural persons who have $500,000 or more under management with the representative's investment advisory firm immediately after entering into the advisory contract with the firm, or who the advisory firm reasonably believes immediately prior to entering into the advisory contract have a net worth in excess of $1 million (collectively ''high net worth individuals''). Rule 203A–3(a)(3)(i) [17 CFR 275.203A–3(a)(3)(i)]. (The Commission is proposing changes to the criteria for determining high net worth individuals. *See infra* section II.B.2 of this Release.) The Commission also excluded from the term ''investment adviser representative'' those supervised persons who do not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser or who provide only impersonal investment advice. Rule 203A–3(a)(2) [17 CFR 275.203A–3(a)(2)].

[24] Adopting Release, *supra* note 6, at nn.113–117 and accompanying text.

[25] As originally proposed, the ten percent allowance would have been measured either by reference to the assets under management attributable to the supervised person or by reference to clients of the supervised person. The Commission adopted only the client test because there did not appear to be any workable method of attributing client assets to supervised persons. *See* Adopting Release, *supra* note 6, at n.115 and accompanying text.

[26] *Id.*

[27] *See, e.g.,* Unif. Sec. Act section 201(c) (1997); Burns Ind. Code Ann. section 23–2–1–8(c)(3) (1997); Md. Code Ann. section 11–401(b)(3)(ii) (1997); Utah Code Ann. section 61–1–3(3)(c) (1997). The first alternative is narrower than these state exemptions because it would permit supervised persons to have a total of five natural person clients nationwide, rather than five natural person clients per state as permitted by these states.

[28] The Investment Company Institute (''ICI'') suggested that the Commission retain the ten percent allowance *and* exclude from the term natural persons certain clients who are ''affiliated with non-natural person clients.'' *See* Letter from Craig S. Tyle, Vice-President and Senior Counsel, ICI, dated August 12, 1997 (available in File No. S7–28–97). Under the current rule, the ten percent allowance is designed as a proxy for accommodation clients and assumes that a supervised person who has a small number of

Under this alternative, the Commission would eliminate the current ten percent allowance, and a supervised person could have an unrestricted number of clients who are natural persons without being subject to state qualification requirements. These clients would be limited, however, to either (i) high net worth clients (as currently permitted by the rule), or (ii) persons who are (A) partners, officers, or directors of the investment adviser for whom the supervised person works or of a business or institutional client of the investment adviser for whom the supervised person works, (B) relatives, spouses, or relatives of spouses of such partners, officers or directors, or (C) relatives or spouses, or relatives of spouses of the supervised person.

The advantage of this approach is that it extends the provision of the rule for accommodation clients to supervised persons with one or a few clients while more closely tying the accommodation client exception to the purpose for which it was adopted. Instead of presuming that the natural person clients of a supervised person having primarily business clients are accommodation clients, the rule would (with the exception of high net worth clients) require there be the type of relationship between the supervised person and the client that customarily results in the client being considered an accommodation client. This approach, however, could greatly increase or decrease the number of natural person clients supervised persons are permitted to have by the rule before they are subject to state qualification requirements. Moreover, it would make the rule somewhat more complex and, perhaps, the status of a supervised person as an investment adviser representative less transparent to a state securities commissioner seeking to enforce state law. Comment is requested on the scope of the accommodation client exception under this alternative. Are there additional relationships between the investment adviser, supervised person, and client that suggest the client is an accommodation client?

Comment is requested on the advantages and disadvantages of the two approaches. Comment is requested on whether additional approaches could be used to permit a supervised person with one or a few institutional or business clients to accept a small number of natural person clients on an accommodation basis without being subject to state qualification requirements. Commenters suggesting an additional approach should address whether the approach limits the scope of the exception to its original purpose (*i.e.*, to permit accommodation clients), any additional complexity it adds to the rule, and the ease with which supervised persons can determine whether they are subject to state qualification requirements.

2. ''High Net Worth'' Clients

Under the current rule, certain ''high net worth'' individuals are excepted persons for purposes of the definition of investment adviser representative and are not counted towards the ten percent allowance. The criteria for determining high net worth individuals are based on the criteria in rule 205–3 under the Advisers Act for determining those clients with whom investment advisers may enter into a performance fee contract under that exemptive rule.[29] The Commission excluded these high net worth individuals from the definition of investment adviser representative because the Commission presumed that these individuals, who are less dependent on the protections of the performance fee prohibition, do not need the protections of state qualification requirements.[30]

In a companion release, the Commission is proposing to revise the high net worth criteria in rule 205–3 to reflect, among other things, the effects of inflation since the standards were adopted in 1985.[31] The criteria for determining which individuals qualify as high net worth individuals in the definition of investment adviser representative would be revised to reflect the changes being proposed in the companion release. Therefore, the threshold levels for high net worth individuals would increase from $500,000 under management and $1,000,000 net worth to $750,000 and $1,500,000, respectively.

C. Other Amendments

1. Pension Consultants—Determining the Value of Assets of Plans

The Commission adopted rule 203A–2(b) to exempt certain pension consultants from the prohibition on Commission registration. Under the rule, pension consultants that provide investment advice to employee benefit plans with respect to assets having an aggregate value of at least $50 million are required to register with the Commission even if they do not otherwise meet the criteria for Commission registration.[32] Rule 203A–2(b)(3) requires investment advisers relying on the exemption to value plan assets as of the date during the investment adviser's most recent fiscal year that the investment adviser was last employed or retained by contract to provide investment advice to the plan with respect to those assets.[33] Because of the fiscal year requirement, an investment adviser could not rely on the pension consultant exemption when, in fact, it provides investment advice to over $50 million of assets of employee benefit plans if the amount of assets grew to more than $50 million after the end of the investment adviser's fiscal year, but before it filed Schedule I.[34] The Commission, therefore, is proposing to amend the rule to permit investment advisers to determine the aggregate value of plan assets during a 12-month period ending within 90 days before the investment adviser files Schedule I.[35]

2. Rule 206(4)–3—Cash Payments for Client Solicitations

The Coordination Act amended section 203(e) of the Advisers Act by adding new section 203(e)(3), which provided the Commission with the authority to deny or revoke the registration of any investment adviser if the investment adviser (or any person

natural person clients does so on the basis of an accommodation to her institutional clients. The ICI proposal would permit the supervised person to have a defined group of accommodation clients in addition to a group of natural persons (up to ten percent of the supervised person's clients) who are unrelated to her institutional clients without being subject to the state qualification requirements. The Commission is proposing a narrower version of the ICI's recommendation to limit the rule's exception to clients who are or may reasonably be presumed to be accommodation clients.

[29] 17 CFR 275.205–3.

[30] *See* Adopting Release, *supra* note 6, at nn. 110–112 and accompanying text.

[31] *See* Investment Advisers Release No. 1682 (November 13, 1997). In the companion release, the Commission also is proposing to add a third alternative test of sophistication.

[32] *See* rule 203A–2(b) [17 CFR 275.203A–2(b)]; Adopting Release, *supra* note 6, at nn. 58–61 and accompanying text.

[33] 17 CFR 275.203A–2(b)(3).

[34] Conversely, if the value of the assets of plans was above $50 million as of the adviser's last fiscal year, but decreased to below $50 million before Schedule I is filed, under the current rule, the adviser would be eligible to rely on the pension consultant exemption.

[35] An adviser seeking to rely on the pension consultant exemption would be required to aggregate: (i) the value of plan assets for which it provided advisory services at the end of the 12-month period, and (ii) the value of any other plan assets for which it provided advisory services at the end of its employment or contract (if terminated before the end of the 12-month period).

During the interim period before the proposed rule is adopted, the Commission would not object if pension consultants chose to value plan assets under the method being proposed rather than under the method provided by the current rule.

associated with the investment adviser) is convicted of any felony, and redesignating section 203(e)(3) as section 203(e)(4).[36] The Commission proposes to conform a cross-reference in rule 206(4)–3(a)(1)(ii)(D) to the redesignated section.[37]

3. Schedule I to Form ADV

Instructions to Schedule I provide guidance on how an investment adviser should determine the amount of its assets under management for purposes of section 203A of the Advisers Act. The Commission is proposing to amend Instruction 7 to Schedule I to clarify that, in determining the total amount of assets under management, investment advisers may include only those securities portfolios for which they provide continuous and regular supervisory or management services as of the date of filing Schedule I. In valuing these securities portfolios, however, investment advisers may use market values as determined within 90 days prior to the filing of Schedule I. The Commission also is proposing several other miscellaneous conforming amendments to Schedule I.[38]

4. Transition Rule 203A–5 and Form ADV–T

The Commission is proposing to withdraw transition rule 203A–5 and Form ADV–T. The rule and form are unnecessary because the transition under the Coordination Act is now complete.

D. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule amendments and form changes that are the subject of this Release, to suggest additional changes (including changes to the provisions of the rules that the Commission is not proposing to amend), or to submit comments on other matters that might have an effect on the proposals described above, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit their proposed rule text.

[36] *See* section 305 of the 1996 Act.

[37] Rule 206(4)–3 prohibits cash payments for client solicitation under certain circumstances.

[38] Instruction 5 would be revised to eliminate an unnecessary reference to July 8, 1997, amend the instruction with respect to the pension consultant exemption consistent with the revision proposed in this Release, and add an instruction with respect to the proposed multi-state adviser exemption. In addition, the Commission is proposing to delete Instruction 8 and the unnecessary reference to the date of the valuation of the assets under management in Schedule I, Part II.

III. Cost-Benefit Analysis

As discussed above, the proposed multi-state investment adviser exemption would permit investment advisers required to register with 30 or more states to register with the Commission even though they do not otherwise meet the criteria for Commission registration.[39] The Commission has limited data on the number of investment advisers that would qualify for the proposed multi-state investment adviser exemption.[40] Because investment advisers must be required to register in a large number of states to qualify for the proposed multi-state investment adviser exemption, the Commission expects that only a few investment advisers would be eligible. For Paperwork Reduction Act purposes, the Commission estimates that there may be ten investment advisers that would qualify each year.[41] Comment is requested on whether there may be more than ten investment advisers eligible for this proposed multi-state investment adviser exemption annually. Investment advisers that believe they would qualify for this exemption are requested to notify the Commission.

The proposed multi-state investment adviser exemption would benefit investment advisers by permitting them to save costs they otherwise would incur if they were required to comply with 30 separate sets of state regulations, especially where state regulations may be duplicative or conflicting. These benefits would include cost savings for complying with state registration requirements, which the Commission estimates may be as much as $300,000 annually.[42] Although these annual costs may vary from adviser to adviser, the Commission assumes, for purposes of this analysis, that it would cost each adviser $30,000 to comply with state-law registration requirements.[43] Based on that figure, the Commission estimates that the annual benefit from the proposed multi-state investment adviser exemption, in the form of the foregone costs of state registration, would be approximately $300,000 for all ten investment advisers expected to be eligible for the proposed multi-state investment adviser exemption. Comment is requested on the reasonableness of this cost estimate. Commenters are requested to provide factual support or assumptions underlying any alternative cost estimate.

The benefits also would include savings for investment advisers from the cost of being examined by 30 different state regulators. State regulators would save the expense of examining these investment advisers.[44] The Commission does not have information to estimate the costs of state examinations for investment advisers because the Commission has no data on the frequency with which these investment advisers would be examined by a particular state or the number of states that would examine these investment advisers each year. The Commission requests comment on the state examination costs saved by investment advisers that are regulated only by the Commission. Finally, the proposed multi-state investment adviser exemption would produce certain unquantifiable regulatory benefits in allowing qualifying investment advisers to be regulated by one entity rather than 30 separate state regulators.

The proposed multi-state investment adviser exemption would impose certain costs on investment advisers relying on the proposed exemption. Under the proposed multi-state investment adviser exemption, an investment adviser would be required to attach a representation to Schedule I

[39] *See supra* section II.A of this Release.

[40] Every investment adviser applying for registration with the Commission is required to file Form ADV with the Commission and to file an amended Form ADV when information on the form has changed. Form ADV requires information about the states in which an investment adviser is registered, but does not distinguish between states where the registration is mandatory and where registration is voluntary. Moreover, the Commission no longer receives Form ADV information for state-registered advisers.

[41] According to information obtained from the one-time form, Form ADV–T, there are approximately 21 advisers that are registered with 30 or more states and no longer registered with the Commission. Although approximately 21 investment advisers are registered in more than 30 states, the Commission estimates that only about half of these advisers are required to register in 30 or more states. Therefore, the Commission estimates that there may be ten investment advisers that would qualify for the proposed multi-state exemption each year.

[42] The Coordination Act expressly preserved the authority of the states to require Commission-registered investment advisers to pay state filing, registration, and licensing fees. Section 307(b) of the Coordination Act.

[43] In the Cost-Benefit Analysis of Rules Implementing Amendments to the Investment Advisers Act of 1940, the Commission estimated that the cost for a mid-size adviser to comply with state-law registration requirements could be as much as $20,000. *See* Cost-Benefit Memorandum (available in File No. S7–31–96) (''Implementing Amendments Cost-Benefit Analysis''). The Commission believes that, because advisers eligible for the proposed multi-state exemption would typically be required to register in more states than the average adviser registered with the Commission (*i.e.*, at least 30 states), the cost would be at least $30,000 per adviser. These dollar estimates were based on discussions with law firms that provide these kinds of services to investment advisers.

[44] The Commission requests comment from the states on the costs of investment adviser examinations and the frequency of such examinations.

initially, when registering, and annually, when amending Form ADV, about the number of states in which the investment adviser would be required to register. The investment adviser also would be required to maintain a record of the states in which it believes it would, but for the exemption, be required to register that was the basis of its representation included on the attachment to Schedule I.

The Commission estimates that the total cost to each eligible investment adviser to comply with the requirements of the proposed multi-state investment adviser exemption would be approximately $24,000.[45] Thus, the Commission estimates that the total cost for the ten investment advisers expected to be eligible for the proposed multi-state investment adviser exemption would be approximately $240,000. There also may be incidental costs to the Commission of registering investment advisers that qualify for this proposed multi-state investment adviser exemption and costs associated with examining those investment advisers.

Overall, the Commission believes that the proposed rule amendments would not impose significant additional costs on investment advisers, but rather would result in a net savings when compared with the costs of complying with state registration requirements. Comment is requested concerning the savings for complying with state registration requirements and any benefit to multi-state advisers in having one regulator. Comment is also requested concerning the costs associated with the requirements of the proposed multi-state investment adviser exemption.

As discussed in more detail above, the Commission is proposing two alternative amendments to the definition of investment adviser representative.[46] Although the Commission has never registered investment adviser representatives, the Commission estimates that Commission-registered advisers employ a total of approximately 153,000 investment adviser representatives.[47] The Commission, however, does not have data on the number of representatives who may be affected by the proposed amendments. The Commission, therefore, is unable to quantify the total benefits and costs that may result from these proposed amendments. The Commission believes, nonetheless, that the proposed amendments could provide benefits to Commission-registered investment advisers and their supervised persons because the proposed amendments would reduce their regulatory burdens by permitting supervised persons who provide services to a few institutional clients to have a small number of natural persons as accommodation clients without being subject to state qualification requirements. The Commission requests comment on the percentage of all investment adviser representatives who would be exempt from state qualification requirements under each of the alternatives being proposed.

The first proposed alternative amendment to the definition of investment adviser representative would retain the present ten percent allowance and also permit a supervised person to have up to five natural person clients. The first alternative definition would benefit supervised persons who provide advice to five natural person clients because they would no longer be subject to state qualification requirements even if they are not able to take advantage of the ten percent allowance. Under the current rule, a supervised person would need to have ten institutional clients to have one accommodation client. The first proposed alternative amendment would provide a bright line test that would allow supervised persons and their firms to determine easily when supervised persons must register with the states.

The first alternative would increase the number of supervised persons of Commission-registered advisers who would no longer be subject to state qualification requirements. This proposal would benefit affected supervised persons by permitting them to save the expense associated with investment adviser representative qualification examinations, such as the costs of monitoring state registration requirements and preparing and registering for state exams.[48] The Commission is unable to quantify the total savings because the Commission does not have data on the number of representatives who would be affected by this proposed amendment. Because the Coordination Act preserved the authority of states to require the payment of state filing, registration, and licensing fees, there would be no loss to the states of fees collected.

Costs associated with the first proposed amendment include the foregone fees collected by the National Association of Securities Dealers Regulation (''NASDR'') and the North American Securities Administrators Association, Inc. (''NASAA'') for state examinations for investment adviser representatives.[49] The Commission is unable to quantify the total costs because the Commission does not have data on the number of representatives who would be affected by this proposed amendment. Comment is requested on the effect this provision will have on the costs incurred or avoided by investment advisers and their supervised persons and on the exam fees collected by the NASDR and NASAA.

As detailed above, the second alternative proposed amendment to the definition of investment adviser representative would replace the ten percent allowance and allow supervised persons to have accommodation clients who have a familial or business relationship with the supervised persons or their institutional clients without limitation on the number of accommodation clients. This alternative proposal might have the effect of either increasing or decreasing the number of supervised persons subject to state qualification requirements, and comment is requested on which outcome is more likely.

To the extent that the second alternative increases the number of supervised persons who are no longer subject to state qualification requirements, affected supervised persons would save state examination and examination preparation fees.[50] The costs associated with such an increase would be the foregone fees collected by the NASDR and NASAA for the state examinations.[51]

If the second alternative decreases the number of supervised persons who are not subject to state qualification requirements, the alternative would

[45] The Commission estimated this figure by multiplying the aggregate burden hours required to attach a representation to Schedule I to Form ADV (240 hours) by an average hourly compensation rate of $100. The estimation of the aggregate burden hours for complying with the requirements of the proposed multi-state exemption is based on the Commission's Paperwork Reduction Act Submission. *See infra* section IV of this Release.

[46] *See supra* section II.B of this Release.

[47] This estimate of the number of investment adviser representatives employed by Commission-registered advisers was made for purposes of the Implementing Amendments Cost-Benefit Analysis. *See* Cost-Benefit Memorandum, *supra* note .

[48] In the Implementing Amendments Cost-Benefit Analysis, the Commission estimated the following costs: $96 to take an exam, $850 for exam preparation, and $150 annually per investment adviser representative to monitor state registration requirements. *See* Cost-Benefit Memorandum, *supra* note .

[49] In the Implementing Amendments Cost-Benefit Analysis, the Commission estimated that foregone revenue from the exam fees would $32 per exam. *Id*.

[50] *See supra* note and accompanying text.

[51] *See supra* note and accompanying text. The Commission does not believe that there are any substantial costs to investor protection that would be associated with this proposed amendment.

produce unquantifiable benefits by tying the accommodation client exception more closely to the purpose for which it was adopted. The second alternative would permit supervised persons to accept clients who have a relationship with the supervised person or his institutional clients that would result in the individual client being considered an accommodation client. The costs of the second alternative, if it decreases the number of supervised persons not subject to state qualification requirements, would be the expense associated with state investment adviser representative examinations.[52] Comment is requested on the effect of the second alternative amendment on the costs incurred or avoided by investment advisers and their supervised persons.

The other proposed rule amendments would revise the time period for determining the value of assets of plans for pension consultants, clarify the instructions in Schedule I to Form ADV, and provide an additional instruction in Schedule I to Form ADV. The benefits of these proposed amendments would be to eliminate any confusion that the language of the rules or instructions may have created. The Commission believes that these amendments would not impose any additional costs to investment advisers.

Comment is requested on this cost-benefit analysis. Commenters are requested to provide views and empirical data relating to any costs and benefits associated with the proposed rule amendments.

For purposes of making determinations required by the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is requesting information regarding the potential effect of the proposed rule amendments on the economy on an annual basis. Commenters should provide data to support their views.

IV. Paperwork Reduction Act

Certain provisions of the proposed rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995,[53] and the Commission has submitted them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collections of information are ''Form ADV'' and ''Schedule I to Form ADV,'' both under the Advisers Act. Form ADV and Schedule I to Form ADV, which the Commission is proposing to amend, contain currently approved collections of information under OMB control numbers 3235–0049 and 3235–0490, respectively. The proposed rule amendments are necessary to clarify previously-adopted rules that implemented changes to the Advisers Act. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

Form ADV

Form ADV is required by rule 203–1 [17 CFR 275.203–1] to be filed by every adviser that applies for registration with the Commission as an investment adviser. Rule 204–1 [17 CFR 275.204–1] sets forth the circumstances requiring the filing of an amendment to Form ADV. Registrants must file an amended Form ADV when information on the initial Form ADV has changed, either at the end of the fiscal year or promptly for certain material changes. In addition, rule 204–1 also requires an investment adviser to file the cover page of Form ADV (along with a Schedule I) annually within 90 days after the end of the investment adviser's fiscal year regardless of whether other changes have taken place during the year.

After 1997, the Commission estimates approximately 7,300 investment advisers would be registered with the Commission and required to amend Form ADV on an annual basis as required by rule 204–1.[54] The Commission previously estimated that there would be 750 new investment advisers registering with the Commission each year. The Commission estimates that an additional ten investment advisers each year would be eligible for Commission registration under the proposed multi-state exemption. Thus, the annual number of responses for filing an application for investment adviser registration is estimated to be approximately 760. The 760 new advisers each year also will be subject to the annual amendment requirement. The Commission estimates that there would be 8,060 total respondents to this collection of information on an annual basis.

The Commission estimates that each of the 7,300 investment advisers registered with the Commission will amend Form ADV, as required by rule 204–1, an average of 1.5 times annually. Of the 760 new advisers each year, 660 will amend Form ADV an average of once annually. The estimated 100 newly-formed investment advisers that will rely on rule 203A–2(d) will amend Form ADV an average of twice annually. Thus, the annual number of responses for completing amended Form ADV is estimated to be approximately 11,810.

The total number of annual responses for Form ADV (initial registration and amendments) is estimated to be 760 responses for new advisers (including ten responses for new advisers relying on the proposed multi-state exemption) and 11,810 responses for annual amendments. The average burden hours for completing Form ADV for initial registration is 9.0063 hours for each respondent (unchanged from previous estimate). The average burden hours for completing Form ADV as an annual amendment is 1.0672 hours (unchanged from previous estimate). The total burden hours imposed by Form ADV is estimated to be 19,448.42.

The collection of information required by Form ADV is mandatory, and responses are not kept confidential.

Schedule I

Schedule I requires an investment adviser to declare whether it is eligible for Commission registration. Schedule I, as part of Form ADV, is required to be filed with an investment adviser's initial application on Form ADV. The rules imposing this collection of information are found at 17 CFR 275.203–1 and 17 CFR 279.1. Rule 204–1 [17 CFR 275.204–1] sets forth the circumstances requiring the filing of an amended Form ADV. Rule 204–1 requires an investment adviser registered with the Commission to file an amended Schedule I to Form ADV annually within 90 days after the end of the investment adviser's fiscal year.

The Commission estimates that 7,300 investment advisers registered with the Commission would respond to the information collection requirements of Schedule I to Form ADV an average of once a year. In addition, the Commission estimates that approximately 760 new advisers each year will file Schedule I of Form ADV. Of the 760 advisers, 660 will file Schedule I to Form ADV an average of once each year, and the remaining 100 that rely on the exemption provided by

[52] *See supra* note and accompanying text.

[53] 44 U.S.C. 3501 *et seq.*

[54] Under rule 203A–5 of the Advisers Act, all investment advisers registered with the Commission were required to file a completed Form ADV–T with the Commission by July 8, 1997, indicating whether they remain eligible for Commission registration. Of the 23,350 Commission-registered investment advisers, approximately 7,200 advisers indicated that they remain eligible for Commission registration, 10,600 advisers withdrew their registrations, and 5,800 advisers did not file their Form ADV–T. The Commission believes that most of the investment advisers that did not file Form ADV–T are either no longer in the advisory business or no longer eligible to register with the Commission. The Commission expects to cancel the registrations of most of these investment advisers.

rule 203A–2(d) will file Schedule I to Form ADV an average of twice each year. It is estimated that the total number of responses would be 8,160.

For the 765 investment advisers that must calculate assets under management for the purpose of completing Schedule I (9.5% of respondents—excluding the ten investment advisers expected to rely on the proposed multi-state exemption), compliance with the requirement to file an amended Schedule I would impose a total annual burden for each investment adviser of approximately 2 hours (unchanged from previous estimate). For the 7,285 investment advisers that either do not need to calculate assets under management to complete Schedule I or calculate assets under management as part of their normal business operations (90.5% of respondents—excluding the ten investment advisers expected to rely on the proposed multi-state exemption) this burden would be 0.75 of an hour (unchanged from previous estimate).

The Commission estimates that an additional ten investment advisers would be eligible for the proposed multi-state exemption. For the ten investment advisers that would rely on the proposed multi-state exemption, the Commission estimates compliance with the requirement to file an amended Schedule I attaching a representation that the investment adviser is required to register as an investment adviser in 30 or more states would impose a total annual burden for each investment adviser of approximately 240 hours.[55]

The total burden hours imposed by Schedule I to Form ADV is estimated to be 9,480.313.

The collection of information required by Schedule I is mandatory, and responses are not kept confidential.

The Commission estimates that these collections of Form ADV and Schedule I together would impose a total hourly burden of 28,928.73 hours.

The total burdens associated with Form ADV and Schedule I to Form ADV would change from the filing of the last Paperwork Reduction Act Submission because of the proposed multi-state exemption and the tabulation of Form ADV–Ts.[56] The current total Form ADV burden is 18,127.88 hours. The new total Form ADV burden would be 19,448.42 hours. The total change in burden hours for Form ADV would be 1,320.54 hours. The current total burden for Schedule I is 6,418.94 hours. The new total burden for Schedule I would be 9,480.313 hours. The total change in burden for Schedule I of Form ADV would be 3,061.373 hours.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to (i) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549 with reference to File No. S7–28–97. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so that a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Summary of Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding amendments to rules 203A–2, 203A–3, 206(4)–3 and Schedule I to Form ADV, and the withdrawal of rule 203A–5 and Form ADV–T under the Advisers Act. The following summarizes the IRFA.

As set forth in greater detail in the IRFA, the Coordination Act, which became effective on July 8, 1997, amended the Advisers Act by reallocating federal and state responsibilities for regulation of investment advisers. On May 15, 1997, the Commission adopted new rules and rule amendments to implement the Coordination Act.[57] The Commission proposes to revise some of these implementing rules. The IRFA states that the proposed rule amendments would exempt multi-state investment advisers from the prohibition on Commission registration, amend the definition of investment adviser representative, and clarify certain other implementing rules.

The IRFA sets forth the statutory authority for the proposed rule amendments. The IRFA also discusses the effect of the proposed rule amendments on small entities. For purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity (i) if it manages assets of $50 million or less, in discretionary or nondiscretionary accounts, as of the end of its most recent fiscal year or (ii) if it renders other advisory services, has $50,000 or less in assets related to its advisory business.[58]

The proposed multi-state exemption for investment advisers would be available to any investment adviser that is prohibited from registering with the Commission and is required to register in 30 or more states. The Commission estimates that there may be ten such investment advisers that would be eligible for the proposed multi-state exemption each year.[59] Therefore, the Commission believes that there would be a few small entities that would be affected by the proposed rule.

The proposed rule amendments minimize regulatory burdens on small-entity investment advisers that are eligible for the proposed multi-state exemption by permitting the investment adviser, once registered with the

[55] Investment advisers also would be required to maintain a record of the states in which they believe they would, but for the exemption, be required to register that was the basis of their representation included on the attachment to Schedule I. The Commission believes that the requirement that the investment advisers maintain a record would impose a nominal burden on investment advisers because the information would have to be gathered for purposes of making the representation.

[56] The total hourly burdens for Form ADV and Schedule I would change because (1) the proposed multi-state exemption would permit a small number of additional advisers to register with the Commission, and (2) the tabulation of information from the completed Forms ADV–T has provided the Commission with a more accurate number of advisers it regulates after the July 8, 1997 division of regulatory responsibilities between the federal and state governments.

[57] *See* Adopting Release, supra note 6.

[58] Rule 275.0–7 [17 CFR 275.0–7]. In January 1997, the Commission proposed to revise this definition of ''small entity.'' *See* Definitions of ''Small Business'' or ''Small Organization'' Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933, Release Nos. 33–7383, 34–38190, IC–22478, and IA–1609 (Jan. 22, 1997) [62 FR 4106 (Jan. 28, 1997)]. The Commission expects to adopt a revised definition of small investment adviser for Regulatory Flexibility Act purposes to reflect the Coordination Act.

[59] *See supra* note 41.

Commission, to continue to be eligible for the proposed multi-state exemption until it is obligated to register in less than 25 states. This five-state difference prevents an investment adviser from being required to register and then de-register frequently with the Commission as a result of a change in its registration obligation in one state or few states.

The proposed amendments to the definition of investment adviser representative would permit supervised persons of Commission-registered investment advisers who only have a few business or institutional clients to accept accommodation clients. The Commission does not have information from which to estimate the number of Commission-registered investment advisers managing assets of $50 million or less or having less than $50,000 in assets relating to its advisory business whose supervised persons would be exempt from the definition of investment adviser representative under the proposed amendments.

The other proposed rule amendments affect only Commission-registered investment advisers. For purposes of these amendments, the Commission estimates that approximately 850 investment advisers are small entities.[60] These proposed amendments clarify the implementing rules and do not impose any additional burden on investment advisers. Therefore, the Commission believes that it is reasonable to estimate that these clarifying amendments would not have a significant economic effect on small entities. Comment is requested on the number of small entities that would be affected by these proposed amendments.

The proposed withdrawal of rule 203A–5 and Form ADV–T would have no effect on small entities because no investment advisers currently should be filing Form ADV–T.

The proposed rule amendments would impose certain new reporting and recordkeeping requirements and eliminate certain other requirements. Investment advisers relying on the proposed multi-state exemption would be required at initial registration to attach a representation to Schedule I that the investment adviser has determined that it must register in at least 30 states and a representation on Schedule E to Form ADV that it will withdraw from Commission registration when it is no longer required to register in at least 25 states.[61] Thereafter, in the annual amendment to Form ADV revising Schedule I, the investment adviser would be required to submit a representation that it has concluded that, but for the proposed multi-state exemption, it would be required to register in at least 25 states. If the amended Schedule I indicated that the investment adviser was no longer eligible for Commission registration, the proposed amendment would require the investment adviser to file a Form ADV–W within 90 days to withdraw its registration with the Commission.

The Commission estimates that it will take approximately 240 hours, annually on average, to comply with these requirements. This burden on investment advisers that use this proposed rule would be outweighed by the cost savings and benefits to the multi-state investment advisers relying on the proposed multi-state exemption.

The proposed withdrawal of Form ADV–T and rule 203A–5 would eliminate any incidental burden that may continue to be imposed by the transition rule. The proposed rule amendments to rule 206(4)–3 and Form ADV would not impose any new reporting, recordkeeping or other compliance requirements.

The Commission believes that there are no rules that duplicate, overlap, or conflict with, the proposed rule amendments.

The IRFA discusses the various alternatives considered by the Commission in connection with the proposed rule amendments that might minimize the effect on small entities, including (a) the establishment of differing compliance or reporting requirements or timetables that take into account resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for small entities.

As stated in the IRFA, after taking into account the resources available to small entities and the potential burden that could be placed on investment advisers that may no longer qualify for the proposed multi-state exemption because of a change in the registration obligations in a few states, the Commission proposes to permit an investment adviser, once registered with the Commission, to continue to be eligible for the proposed multi-state exemption as long as it would be obligated to register in at least 25 states, five fewer states than when it initially registered. Moreover, the burdens associated with complying with the requirements of the rule would affect only a very small number of investment advisers each year.

With respect to the other proposed rule amendments, the Commission believes that the establishment of different compliance or reporting requirements for small entities is neither necessary nor practicable. The information required by Form ADV and Schedule I is necessary for the Commission to determine whether the investment advisers are eligible for Commission registration. The proposed rule amendments will not change significantly any compliance costs. Further clarification, consolidation or simplification of the requirements for small entities does not seem feasible. The Commission believes that the rule amendments, as proposed, will not adversely affect small entities and, instead, include regulatory alternatives that minimize the effect on small entities.

The IRFA includes information concerning the solicitation of comments with respect to the IRFA generally, and in particular, the number of small entities that would be affected by the proposed rule amendments. A copy of the IRFA may be obtained by contacting Carolyn-Gail Gilheany, Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 10–6, Washington, D.C. 20549.

VI. Statutory Authority

The Commission is proposing amendments to rule 203A–2 pursuant to the authority set forth in section 203A(c) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3a(c)].

The Commission is proposing amendments to rule 203A–3 pursuant to the authority set forth in sections 202(a)(17) and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–2(a)(17), 80b–11(a)].

The Commission is proposing amendments to rule 206(4)–3 pursuant to the authority set forth in sections 204,

[60] This estimate of the number of small entities was made for purposes of the Final Regulatory Flexibility Analysis for the rules implementing the Coordination Act. *See* Adopting Release, *supra* note 6, at nn. 189–190 and accompanying text. Of the 23,350 Commission-registered investment advisers, 5,800 advisers have not filed their Form ADV–T, indicating their eligibility to remain registered with the Commission. *See supra* note 54. The Commission also expects to adopt a revised definition of small entity for purposes of the Regulatory Flexibility Act. *See supra* note 58. Therefore, the Commission plans to revise its estimate of the number of Commission-registered advisers that are small entities after the transition is complete so that the Commission would have more accurate information to estimate the number of small entities under the new definition of that term.

[61] The proposed multi-state investment adviser exemption also would require investment advisers to maintain a record of the states in which they would, but for the exemption, be required to register.

206, and 211 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–4, 80b–6, 80b–11].

The Commission is proposing to withdraw rule 203A–5 pursuant to the authority set forth in sections 204 and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–4, 80b–11(a)].

The Commission is proposing amendments to Schedule I to Form ADV pursuant to the authority set forth in sections 203(c)(1) and 204 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1) and 80b–4].

The Commission is proposing to remove and reserve rule 279.3 and proposing to remove Form ADV–T pursuant to the authority set forth in sections 204 and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–4, 80b–11(a)].

List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 is revised to read as follows:

Authority: 15 U.S.C. 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

Section 275.203A–1 is also issued under 15 U.S.C. 80b–3a.

Section 275.203A–2 is also issued under 15 U.S.C. 80b–3a.

Section 275.204–2 is also issued under 15 U.S.C. 80b–6.

Section 275.205–3 is also issued under 15 U.S.C. 80b–5(e).

2. Section 275.203A–2 is amended by revising the introductory text of § 275.203A–2 and paragraph (b)(3) and adding paragraph (e) to read as follows:

§ 275.203A–2 Exemptions from prohibition on Commission registration.

The prohibition of section 203A(a) of the Act (15 U.S.C. 80b–3a(a)) shall not apply to:

* * * * *

(b) * * *

(3) In determining the aggregate value of assets of plans, include only that portion of a plan's assets for which the investment adviser provided investment advice (including any advice with respect to the selection of an investment adviser to manage such assets). Determine the aggregate value of assets by cumulating the value of assets of plans with respect to which the investment adviser was last employed or retained by contract to provide investment advice during the 12-month period ended within 90 days of filing Schedule I to Form ADV (17 CFR 279.1).

* * * * *

(e) *Multi-State Investment Advisers.* An investment adviser that:

(1) Upon submission of its application for registration with the Commission, is required by the laws of 30 or more States to register as an investment adviser with securities commissioners (or any agencies or officers performing like functions) in the respective States, and thereafter would, but for this section, be required by the laws of at least 25 States to register as an investment adviser with securities commissioners (or any agencies or officers performing like functions) in the respective States;

(2) Attaches a representation to Schedule I to Form ADV (17 CFR 279.1) that the investment adviser has reviewed the applicable State and federal laws and has concluded that, in the case of an application for registration with the Commission, it is required by the laws of 30 or more States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States and, in the case of an amendment to Form ADV revising Schedule I to Form ADV, it would be required by the laws of at least 25 States to register with the securities commissioners (or any agencies or officers performing like functions) in the respective States within 90 days prior to the date of filing Schedule I;

(3) Includes on Schedule E to its Form ADV (17 CFR 279.1), an undertaking to withdraw from registration with the Commission if an amendment to Form ADV revising Schedule I to Form ADV indicates that the investment adviser would be required by the laws of fewer than 25 States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States, and, within 90 days after filing Schedule I to Form ADV, files a completed Form ADV–W (17 CFR 279.2) whereby the investment adviser withdraws from registration with the Commission if the amendment to Form ADV revising Schedule I indicates that the investment adviser would be prohibited by section 203A of the Act (15 U.S.C. 80b–3a) from registering with the Commission; and

(4) Maintains in an easily accessible place a record of the States that the investment adviser has determined it would, but for the exemption, be required to register for a period of not less than five years from the filing of a Schedule I to Form ADV that includes a representation that is based on such record.

3. In § 275.203A–3 the introductory text and paragraph (a) are revised to read as follows:

Proposal I

§ 275.203A–3 Definitions.

For purposes of section 203A of the Act (15 U.S.C. 80b–3a) and the rules thereunder:

(a)(1) *Investment Adviser Representative. Investment adviser representative* of an investment adviser means a supervised person of the investment adviser:

(i) Who has more than five clients who are natural persons other than excepted persons described in paragraph (a)(3)(i) of this section; or

(ii) More than ten percent of whose clients are natural persons other than excepted persons described in paragraph (a)(3)(i) of this section.

(2) Notwithstanding paragraph (a)(1) of this section, a supervised person is not an investment adviser representative if the supervised person:

(i) Does not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser; or

(ii) Provides only impersonal investment advice.

(3) For purposes of this section:

(i) *Excepted person* means a natural person who is a qualified client as defined in § 275.205–3(d)(1).

(ii) *Impersonal investment advice* means investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

(4) Supervised persons may rely on the definition of *client* in § 275.203(b)(3)–1 to identify clients for purposes of paragraph (a)(1) of this section, except that supervised persons need not count clients that are not residents of the United States.

Proposal II

§ 275.203A–3 Definitions.

For purposes of section 203A of the Act (15 U.S.C. 80b–3a) and the rules thereunder:

(a)(1) *Investment Adviser Representative. Investment adviser representative* of an investment adviser means a supervised person of the

investment adviser whose clients are natural persons other than excepted persons described in paragraph (a)(3)(i) of this section.

(2) Notwithstanding paragraph (a)(1) of this section, a supervised person is not an investment adviser representative if the supervised person:

(i) Does not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser; or

(ii) Provides only impersonal investment advice.

(3) For purposes of this section:

(i) *Excepted person* means a natural person who is a:

(A) Qualified client as defined in § 275.205–3(d)(1);

(B) Partner, officer, director, (or other person occupying a similar status or performing similar functions), of the investment adviser for whom the supervised person works or of a client that is not a natural person of the investment adviser for whom the supervised person works;

(C) Relative, spouse, or relative of spouse of such partner, officer or director; or

(D) Relative, spouse or relative of spouse of the supervised person.

(ii) *Impersonal investment advice* means investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

(4) Supervised persons may rely on the definition of *client* in § 275.203(b)(3)–1 to identify clients for purposes of paragraph (a)(1) of this section, except that supervised persons need not count clients that are not residents of the United States.

§ 275.203A–5 [Removed and Reserved]

4. Section 275.203A–5 is removed and reserved.

§ 275.206(4)–3 [Amended]

5. In § 275.206(4)–3, paragraph (a)(1)(ii)(D) is amended by revising the cite ''203(e)(3)'' to read ''203(e)(4)''.

§§ 275.203A–1 and 275.203A–2 [Amended]

6. In 17 CFR part 275 remove ''[15 U.S.C. 80b–3A(a)]'' and add, in its place, ''(15 U.S.C. 80b–3a(a))'' in the following places:

a. Section 275.203A–1 (b)(2), (c), and (d); and

b. Section 275.203A–2 (d)(2) and (d)(3).

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

7. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

8. By revising Schedule I to Form ADV (referenced in § 279.1) to read as follows:

Note: The text of Schedule I to Form ADV (§ 279.1) does not and the amendments will not appear in the Code of Federal Regulation. Schedule I is attached as Appendix A.

§ 279.3 [Removed and Reserved]

9. Section 279.3 is removed and reserved.

10. Form ADV–T is removed.

Note: Form ADV–T does not appear in the Code of Federal Regulation.

Dated: November 13, 1997.

By the Commission.

Jonathan G. Katz,

Secretary.

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APPENDIX A [NOTE: The text of Schedule I does not appear in the Code of Federal Regulations.]

SCHEDULE I

Schedule for Declaring Eligibility for SEC Registration

OMB APPROVAL
OMB Number: 3235-0490
Expires:
Estimated average burden
hours per response: 1.1618 minutes

Applicant:	SEC File No. 801-	Date: MM/DD/YY

Part I Eligibility for SEC Registration

Section 203(h) of the Investment Advisers Act of 1940 ("Advisers Act") authorizes the Commission to cancel or deny the registration of any investment adviser that does not meet the criteria for SEC registration set forth in section 203A of the Advisers Act. This Part I requires applicant to declare whether it is eligible, or continues to be eligible, for Commission registration.

Check either (a) or (b):

(a) ☐ Applicant is eligible (or will remain eligible) for SEC registration.

For an applicant to be eligible (or remain eligible) for SEC registration, applicant must respond affirmatively (by checking the appropriate box or boxes) to at least one of the items (i) through (x) below:

Applicant:

(i) ☐ has assets under management of $25 million (in U.S. dollars) or more;

Report assets under management in Part II if "assets under management" is the sole basis of applicant's eligibility for SEC registration (i.e., this item (i) is checked, and none of items (ii) through (x) below are checked).

(ii) ☐ has its principal office and place of business in Colorado, Iowa, Ohio, or Wyoming (*See Instruction 3*);

(iii) ☐ has its principal office and place of business outside the United States (*See Instruction 3*);

(iv) ☐ is an investment adviser to an investment company registered under the Investment Company Act of 1940 (*See Instruction 4*);

(v) ☐ is a nationally recognized statistical rating organization;

(vi) ☐ is a pension consultant that qualifies for the exemption in rule 203A-2(b) (*See Instruction 5(a)*);

(vii) ☐ is an investment adviser that controls, is controlled by, or is under common control with, an investment adviser eligible to maintain its registration with the Commission, and whose principal office and place of business is the same as the eligible investment adviser (*See Instruction 5(b)*);

(viii) ☐ is a newly formed investment adviser relying on rule 203A-2(d) (*See Instruction 5(c)*);

(ix) ☐ is a multi-state investment adviser relying on rule 203A-2(e) (*See Instruction 5(d)*);

(x) ☐ has received an order of the Commission exempting applicant from the prohibition on registration with the Commission.

Application number: 803- _____

Date of Commission's order: _____

(b) ☐ Registrant is no longer eligible for SEC registration. (*See Instruction 6*)

Applicant:	SEC File No. 801-	Date: MM/DD/YY

Part II Assets Under Management

Report assets under management if required by Part I (*i.e.*, if item I(a)(i) is checked yes "(x)" and is the sole basis for applicant's eligibility for SEC registration).

State the amount of applicant's assets under management (in U.S. dollars): (*See Instruction 7*)

$_____.00 (in U.S. dollars)

Applicants are reminded that it is a violation of section 207 of the Advisers Act to make any untrue statement of a material fact in any report filed with the Commission, or willfully to omit to state in any such report any material fact that is required to be stated therein.

BILLING CODE 8010–01–C

Schedule Instructions

Instruction 1. General Instructions

(a) SEC's Collection of Information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 203(c)(1) and 204 of the Advisers Act authorize the Commission to collect the information on this Schedule from applicants. *See* 15 U.S.C. §§ 80b–3(c)(1) and 80b–4. Filing of this Schedule is mandatory. The principal purpose of this collection of information is to enable the Commission to determine which investment advisers are eligible to maintain their registration with the Commission and to provide for the withdrawal from Commission registration for advisers that are no longer eligible. The Commission will maintain files of the information on this Schedule and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on page one of this Schedule, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507. The applicable Privacy Act system of records is SEC–2, and the routine use of the records are set forth at 40 Federal Register 39255 (Aug. 27, 1975) and 41 FR 5318 (Feb. 5, 1976).

(b) For Further Information: Additional information about the rules referred to in this Schedule is found in the Commission's adopting release, Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Rel. No. 1633 (May 15, 1997).

Instruction 2. Principal Place of Business

Applicant's principal place of business reported in Form ADV, Part I, Item 2.A. is the applicant's principal office and place of business, *i.e.*, the executive office from which the officers, partners, or managers of the applicant direct, control, and coordinate applicant's activities. *See* rule 203A–3(c).

Instruction 3. Advisers in Colorado, Iowa, Ohio, or Wyoming; Foreign Advisors

Under the Advisers Act, an applicant whose principal office and place of business (see Instruction 2) is in a State that does not register investment advisers is required to register with the Commission, even if none of the criteria for SEC registration (e.g., $25 million of assets under management) is met. Currently these States are Colorado, Iowa, Ohio, and Wyoming. Applicants that have their principal office and place of business in one of these States should check the box in item (a)(ii) of Part I.

An applicant whose principal office and place of business is located in a country other than the United States (*i.e.*, not in the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States) also is required to register with the Commission. Such an applicant should check the box in item (a)(iii) of Part I.

Instruction 4. Advisers to Investment Companies

An applicant should not check item (a)(iv) of Part I unless applicant currently provides advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940. The investment company must be operational, i.e., have assets and shareholders (other than just the organizing shareholders).

Instruction 5. Exemptions

(a) Pension Consultants. An applicant that provides investment advice to employee benefit plans with respect to assets having an aggregate value of more than $50 million during the 12-month period ended within 90 days of filing this Schedule may register with the Commission. An investment adviser seeking to rely on the pension consultant exemption must aggregate: (i) the value of assets for which it provided advisory services at the end of the 12-month period, and (ii) the value of any other assets for which it provided advisory services at the end of its employment or contract (if terminated before the end of the 12-month period). See rule 203A–2(b).

(b) Affiliated Advisers. An applicant that controls, is controlled by, or is under common control with, an investment adviser that is eligible to maintain its registration with the Commission (''eligible adviser'') is itself eligible to maintain its registration with the Commission if the principal office and place of business of the applicant is the same as that of the eligible adviser. See rule 203A–2(c).

(c) Newly Formed Advisers. A newly formed investment adviser may register with the Commission at the time of its formation if the adviser has a reasonable expectation that within 120 days of registration it will become eligible for Commission registration. At the end of the 120-day period, the adviser is required to file an amended Schedule I. If the investment adviser indicates on the amended Schedule I that it has not become eligible to register with the Commission, the adviser is required to file a Form ADV–W concurrently with the Schedule I, thereby withdrawing from registration with the Commission. An applicant registering with the Commission in reliance on this exemption must include on Schedule E of Form ADV an undertaking to withdraw from registration if, at the end of the 120-day period, the investment adviser would be prohibited from Commission registration. See rule 203A–2(d).

(d) Multi-State Advisers. An investment adviser may register with the Commission if it is required to register as an investment adviser with the securities authorities of 30 or more states. To take advantage of this exemption, an applicant must (i) attach to this Schedule a representation that it has reviewed the state and federal laws and has concluded that it must register with the securities authorities of at least 30 states within 90 days prior to the date of filing this Schedule, and (ii) include on Schedule E to Form ADV an undertaking to withdraw from registration if it would no longer be required to register in at least 25 states when it files its annual amendment to Form ADV revising this Schedule. Each year (and for so long as the investment adviser continues to rely on the multi-state investment adviser exemption), when the adviser updates its Schedule I, it must attach a new representation that it has concluded that, but for the exemption, it would be required to register with the securities authorities of at least 25 states within 90 days prior to the date of filing Schedule I. Additionally, each time the adviser makes such a representation, the adviser must create and maintain a list of the states that, but for the exemption, it would be required to register. This list must be maintained in an easily accessible place for a period of not less than five years from the date each representation is filed as an attachment to this Schedule. See rule 203A–2(e).

Instruction 6. Part I, Item (b)

If item (b) of Part I is checked, registrant's investment registration with the SEC must be withdrawn within 90 days after the date this Schedule I was required by rule 204–1(a) to have been filed with the Commission. Thus, registrant's registration must be withdrawn no later than 180 days after the end of its fiscal year. If registrant's

registration is not withdrawn within this time period, registrant will be subject to having its registration cancelled pursuant to section 203(h) of the Advisers Act. See rule 203A–1(c).

Instruction 7. Determining Assets Under Management

Not all applicants are required to provide the amount of their assets under management. An applicant must report its assets under management in Part II only if item I(a)(i) is check yes ''(x)'' and the amount of assets applicant has under management is the sole basis for applicant's eligibility for SEC registration (i.e., applicant has not checked any of items I(a)(ii) through (x)).

In determining the assets applicant has under management, include the ''securities portfolios'' (or portions thereof) for which applicant provides ''continuous and regular supervisory or management services'' as of the date of filing this Schedule.

(a) Securities Portfolios. An account is a securities portfolio if at least 50% of the total value of the account consists of securities. For purpose of this 50% test, applicant may treat cash and cash equivalents (i.e., bank deposits, certificates of deposit, bankers acceptances, and similar bank instruments) as securities.

Applicants may include securities portfolios that are: (i) Family or proprietary accounts of the applicant (unless applicant is a sole proprietor, in which case the personal assets of the sole proprietor must be excluded); (ii) accounts for which applicant receives no compensation for its services; and (iii) accounts of clients who are not U.S. residents.

(b) Value of Portfolio. Include the entire value of each securities portfolio (or portion thereof) for which applicant provides ''continuous and regular supervisory or management services.'' If applicant provides continuous and regular supervisory or management services for only a portion of a securities portfolio, include as assets under management only the portion of the securities portfolio that receives such services. Exclude, for example, a portion of an account:

(1) under management by another person; or

(2) that consists of real estate or businesses the operations of which are ''managed'' on behalf of a client but not as an investment.

No deduction is required for securities purchased on margin.

(c) Continuous and Regular Supervisory or Management Services.

General Criteria. An applicant provides continuous and regular supervisory or management services with respect to a securities portfolio if the applicant either—

(1) has discretionary authority over and provides ongoing supervisory or management services with respect to the account; or

(2) does not have discretionary authority over the account, but has an ongoing responsibility to select or make recommendations, based upon the needs of the client, as to specific securities or other investments the account may purchase or sell and, if such recommendations are accepted by the client, is responsible for arranging or effecting the purchase or sale.

Factors. Applicants should consider the following factors in evaluating whether continuous and regular supervisory or management services are being provided.

(1) Terms of the advisory contract. A provision in an advisory contract by which the applicant agrees to provide ongoing management services suggests that the account receives such services. Other provisions in the contract, or the actual management of the applicant, however, may rebut such a suggestion.

(2) Form of compensation. A form of compensation based on the average value of assets under management over a specified period of time would suggest that the applicant provides continuous and regular supervisory or management services. On the other hand, a form of compensation based upon time the applicant spends with a client during a client visit would suggest otherwise. A retainer based upon a percentage of assets covered by a financial plan would not suggest that the applicant provides continuous and regular supervisory or management services.

(3) The management practice of the applicant. The extent to which the applicant is actively managing the assets or providing advice bears on whether the services are continuous and regular supervisory or management services. However, infrequent trades (e.g., based on a ''buy and hold'' strategy) should not alone form the basis for a determination that the services are not provided on a continuous and regular basis.

Examples. To assist applicants, the Commission is providing examples of accounts that may receive continuous and regular supervisory or management services, based upon the criteria and factors discussed above. These examples are not exclusive.

Accounts that may receive continuous and regular supervisory or management services:

(1) Accounts for which the applicant allocates assets of a client among mutual funds (even if it does so without a grant of discretionary authority, but only if the general criteria for non-discretionary accounts is satisfied and the factors suggest that the account receives continuous and regular supervisory or management services); and

(2) Accounts for which the applicant allocates assets among other managers—but *only* under a grant of discretionary authority by which it may hire and fire managers and reallocate assets among them.

Accounts that do not receive continuous and regular supervisory or management services:

(1) Accounts for which the applicant provides market timing recommendations (to buy or sell) but has no ongoing management responsibilities;

(2) Accounts for which the applicant provides only impersonal advice, e.g., market newsletters;

(3) Accounts for which the applicant provides an initial asset allocation, without continuous and regular monitoring and reallocation; and

(4) Accounts for which the applicant provides advice only on an intermittent or periodic basis, upon the request of the client, or in response to some market event, e.g., an account that is reviewed and adjusted on a quarterly basis.

(d) Value of Assets Under Management. Calculate the total amount of applicant's assets under management by including the value, as determined within 90 days prior to the date of filing this Schedule, of securities portfolios (or portions thereof) for which applicant provides continuous and regular supervisory or management services as of the date of filing this Schedule. Current market value should be determined using the same method as that used to determine the account value reported to clients or fees for investment advisory services.

(e) Example. To assist applicants, the Commission is providing an example of the method of determining whether a client account may be included as ''assets under management.''

Example

A client's portfolio consists of the following:

$6,000,000	stocks and bonds
$1,000,000	cash and cash equivalents
$3,000,000	non-securities (collectibles, commodities, real estate, etc.)

$10,000,000	Total Assets

First, is the account a ''securities portfolio?'' The account is a securities portfolio because securities as well as cash and cash equivalents (which the applicant has chosen to include as securities) ($6,000,000+$1,000,000=$7,000,000) comprise at least 50% of the value of the account (here, 70%). (See Instruction 7(a))

Second, does the account receive ''continuous and regular supervisory or management services?'' The entire account is managed on a discretionary basis and is provided ongoing supervisory and management services, and therefore receives continuous and regular supervisory or management services. (See Instruction 7(c))

Third, what is the entire value of the account? The entire value of the account ($10,000,000) is included in the calculation of the investment adviser's total assets under management.

[FR Doc. 97–30296 Filed 11–18–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–1682, File No. S7–29–97]

RIN 3235–AH25

Exemption To Allow Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing amendments to the rule under the Investment Advisers Act of 1940 that permits investment advisers to charge certain clients performance or incentive fees. The amendments would modify the rule's criteria for clients eligible to enter into a contract under which a performance fee is charged and eliminate provisions specifying required contract terms and disclosures. The amendments would provide investment advisers greater flexibility in structuring performance fee arrangements with clients who are financially sophisticated or have the resources to obtain sophisticated financial advice regarding the terms of these arrangements.

DATES: Comments must be received on or before January 20, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–29–97; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Kathy D. Ireland, Attorney, or Jennifer S. Choi, Special Counsel, at (202) 942–0716, Task Force on Investment Adviser Regulation, Division of Investment Management, Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed amendments to rule 205–3 [17 CFR 275.205–3] under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*] (''Advisers Act'').

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Executive Summary

Rule 205–3 under the Advisers Act permits investment advisers to charge performance fees to clients with at least $500,000 under the adviser's management or with a net worth of more than $1,000,000. The rule requires certain terms to be included in contracts providing for performance fees and specific disclosures to be made to clients entering into these contracts. The Commission is proposing to eliminate the provisions of the rule that prescribe contractual terms and require specific disclosures. In addition, the Commission is proposing to revise the threshold levels for determining client eligibility to reflect the effects of inflation on the levels set in 1985 when the rule was adopted and to add a third criterion for eligibility. Under the proposed amendments, eligible clients must have assets under management with the adviser of at least $750,000, net worth of more than $1,500,000, or be ''qualified purchasers'' under section 2(a)(51)(A) of the Investment Company Act of 1940 (''Investment Company Act'').[1]

I. Background

Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser from entering into, extending, renewing, or performing any investment advisory contract that provides for compensation to the adviser based on a share of capital gains on, or capital appreciation of, the funds or any portion of the funds of the client.[2] Congress enacted the prohibition against performance fees in 1940 to protect advisory clients from compensation arrangements that it believed might encourage advisers to take undue risks with client funds to increase advisory fees.[3]

In 1970, Congress provided an exception from the prohibition in section 205(a)(1) for advisory contracts relating to the investment of assets in excess of $1,000,000,[4] so long as an appropriate ''fulcrum fee'' is used.[5] This

[1] 15 U.S.C. 80a–2(a)(51)(A).

[2] 15 U.S.C. 80b–5(a)(1).

[3] H.R. Rep. No. 2639, 76th Cong., 3d Sess. 29 (1940). Performance fees were characterized as ''heads I win, tails you lose'' arrangements in which the adviser had everything to gain if successful and little, if anything, to lose if not. S. **Rep. No.** 1775, 76th Cong., 3d Sess. 22 (1940). *See also* SEC, **Investment Trusts and Investment Companies,** H.R. Doc. No. 477, 76th Cong., 3d Sess. 30 (1939). Congress, however, recognized that performance fees may not be harmful in every context and initially excluded from the prohibition contracts between investment advisers and investment companies. Investment Advisers Act of 1940, ch. 686, § 205(1), 54 Stat. 847, 852 (1940) (amended 1970).

[4] Trusts, governmental plans, collective trust funds, and separate accounts referred to in section 3(c)(11) of the Investment Company Act [15 U.S.C. 80a–3(c)(11)] are not eligible for this exception from the performance fee prohibition under section 205(b)(2)(B) of the Advisers Act [15 U.S.C. 80b–5(b)(2)(B)].

[5] 15 U.S.C. 80b–5(b). A fulcrum fee generally involves averaging the adviser's fee over a specified period and increasing and decreasing the fee proportionately with the investment performance of the company or fund in relation to the investment record of an appropriate index of securities prices. *See* Adoption of Rule 205–2 Under the Investment Advisers Act of 1940, as Amended, Defining ''Specified Period'' Over Which the Asset Value of the Company or Fund Under Management is Averaged, Investment Advisers Act Release No. 347 (Nov. 10, 1972) (37 FR 24895 (Nov. 23, 1972)); Adoption of Rule 205–1 Under the Investment Advisers Act of 1940 Defining ''Investment Performance'' of an Investment Company and

statutory exception was the only provision under which advisers could enter into performance fee contracts with so-called ''high net worth'' clients until 1985 when the Commission adopted rule 205–3.[6]

Under rule 205–3, an adviser may charge performance fees to a client that has $500,000 under management with the adviser or has a net worth of $1,000,000. Because of their wealth, financial knowledge, and experience, the Commission presumed that these clients are less dependent on the protections provided by the Advisers Act's restrictions on performance fee arrangements.[7] The rule, however, imposes a number of required provisions on performance fee contracts and obligates the adviser to provide certain disclosures to clients. These provisions were included as ''alternative safeguards to the statutory prohibition.'' [8]

In 1992, the Commission's Division of Investment Management issued a report concluding that the existing exemptions from the performance fee prohibition should be expanded to permit certain sophisticated clients of investment advisers to enter into arrangements without the restrictions in the statutory or administrative exemptions.[9] The Division expressed the view that ''where a client appreciates the risk of performance fees and is in a position to protect itself from overreaching by the adviser, the determination of whether such fees provide value is best left to the client.'' [10] The Division recommended that Congress enact legislation specifically authorizing the Commission to provide exemptions from the performance fee prohibition for advisory contracts with any person whom the Commission determined did not need the protections of the prohibition.[11] Four years later, Congress included in the National Securities Markets Improvement Act of 1996 (''1996 Act'') [12] two additional statutory exceptions from the performance fee prohibition [13] and new section 205(e) of the Advisers Act, which authorizes the Commission to exempt conditionally or unconditionally from the performance fee prohibition advisory contracts with persons that the Commission determines do not need its protections.[14]

II. Discussion

A. Elimination of Specific Contractual and Disclosure Requirements

As noted above, rule 205–3 contains several conditions on advisers entering into performance fee contracts in addition to those related to the eligibility of clients.[15] First, the compensation provided to the adviser under the contract must be based on the performance of securities that is calculated pursuant to two different methodologies specified in the rule, depending upon the nature of the securities under management.[16] In addition, the performance fee must be based on the gains less the losses in the client's account for a period of not less than one year.[17] Second, the investment adviser must disclose to the client, or to the client's independent agent, prior to entering into the contract, all material information concerning the proposed advisory arrangement, including: (1) the possibility that the arrangement may create an incentive for the adviser to make riskier or more speculative investments; (2) the fact (if applicable) that the adviser may receive increased compensation based on unrealized appreciation as well as realized gains; (3) the periods that will be used to measure investment performance and their significance in the computation of the fee; (4) the nature and significance of any index that will be used as a comparative measure of investment performance, and why the index is appropriate; and (5) if the fee is based on unrealized appreciation of securities for which market quotations are not readily available, how the securities will be valued and the extent to which the value will be determined independently.[18] Finally, the adviser must reasonably believe that the contract represents an arm's-length arrangement and that the client, alone or together with an independent agent, understands the proposed compensation arrangement and its risks.[19]

Whether these provisions are necessary to protect sophisticated clients of the type contemplated by rule 205–3 was examined by the Division of Investment Management in 1992. The Commission agrees with the Division's conclusion that if a client appreciates the risk of performance fees and is in a position to protect itself from overreaching by the adviser, then the terms of the arrangement are best left to

''Investment Record'' of an Appropriate Index of Securities Prices, Investment Advisers Release No. 327 (Aug. 8, 1972) (37 FR 17467 (Aug. 29, 1972)).

In 1980, Congress added an exception for contracts involving business development companies under conditions set forth in section 205(b)(3) of the Advisers Act (15 U.S.C. 80b–5(b)(3)).

[6] Rule 205–3 was adopted under section 206A of the Advisers Act (15 U.S.C. 80b–6a), which grants the Commission general exemptive authority. In providing this authority, Congress noted that the Commission would be able to ''exempt persons . . . from the bar on performance-based advisory compensation'' in appropriate cases. H.R. Rep. No. 1382, 91st Cong., 2d Sess. 42 (1970); S. Rep. No. 184, 91st Cong., 1st Sess. 46 (1969).

[7] Exemption to Allow Registered Investment Advisers to Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 996 (Nov. 14, 1985) (50 FR 48556 (Nov. 26, 1985)).

[8] *Id.* at Section I.C.

[9] *See* Division of Investment Management, U.S. Securities and Exchange Commission, Protecting Investors: A Half Century of Investment Company Regulation 237–49 (1992) (''Protecting Investors'').

[10] *Id.* at 245.

[11] *Id.* at 245, 247–48.

[12] Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the U.S. Code).

[13] Section 210 of the 1996 Act added to section 205 of the Advisers Act exceptions for contracts with companies excepted from the definition of investment company by section 3(c)(7) of the Investment Company Act [15 U.S.C. 80a–3(c)(7)] and contracts with persons who are not residents of the United States. The definition of ''person'' under section 202 of the Advisers Act includes companies, which in turn includes corporations, partnerships, associations, joint-stock companies, trusts and organized groups of persons [15 U.S.C. 80b–2(a)(5), (16)]; therefore, the exception for foreign residents includes foreign investment companies.

[14] 15 U.S.C. 80b–5(e). Section 205(e) provides that the Commission may determine that persons may not need the protections of section 205(a)(1) on the basis of such factors as ''financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with [section 205].''

[15] Before the enactment of the 1996 Act, rule 205–3 was available only to Commission-registered investment advisers. Title III of the 1996 Act, the Coordination Act, which became effective on July 8, 1997, generally limited Commission registration to larger investment advisers but continued the application of the prohibition of section 205(a)(1) of the Advisers Act to all advisers (other than those exempt from registration pursuant to section 203(b) of the Act [15 U.S.C. 80b–3(b)]), regardless of whether they are prohibited from registering with the Commission pursuant to the Coordination Act. 1996 Act, *supra* note 12. In light of this provision, the Commission amended rule 205–3 earlier this year to permit all advisers to take advantage of the limited exemption in the rule. Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) [62 FR 28112 (May 22, 1997)] (''Implementing Release''). The proposed amendments herein also include conforming changes to the May 1997 rule amendments.

[16] If market quotations for the securities involved are readily available, then the formula must include realized capital losses and unrealized capital depreciation of the securities. If market quotations are not readily available, then the formula still must include realized capital losses, but need not include unrealized capital depreciation unless it also includes unrealized capital appreciation. Rule 205–3(c)(1), (2) [17 CFR 275.205–3(c)(1), (2)].

[17] Rule 205–3(c)(3) [17 CFR 275.205–3(c)(3)].

[18] Rule 205–3(d) [17 CFR 275.205–3(d)].

[19] Rule 205–3(e) [17 CFR 275.205–3(e)]. The rule also contains a number of definitions of terms necessitated by these conditions, including ''affiliated person,'' ''client's independent agent,'' ''interested person,'' ''securities for which market quotations are readily available,'' and ''securities for which market quotations are not readily available.'' Rule 205–3(g)(3)–(6) [17 CFR 275.205–3(g)(3)–(6)].

the client.[20] While the conditions of rule 205–3 are intended to protect clients, the Commission's experience with the rule suggests they also may inhibit flexibility of advisers and their clients in establishing performance fee arrangements beneficial to both parties. Moreover, in light of the other protections provided by the Advisers Act, the Commission believes that these clients may not need the protections of the rule.[21] Therefore, the Commission believes that the conditions may not be necessary to protect these types of clients and proposes, pursuant to its exemptive authority under new section 205(e) of the Advisers Act, to eliminate all of the contractual and disclosure provisions in rule 205–3 other than the client eligibility tests.

Under the proposed rule amendments, performance fee contracts would no longer be subject to the prescribed contract terms and disclosures. Thus, an adviser would be free to negotiate all of the terms of a performance fee contract with a client. The Commission emphasizes, however, that an adviser charging a performance fee would continue to be subject to the Advisers Act's prohibitions against fraud.[22] As a result, an adviser could not enter into a performance fee arrangement that was inconsistent with the adviser's fiduciary duties and could not fail to disclose material information about the performance fee to the client.[23]

Comment is requested on whether rule 205–3 should be amended to eliminate all of the contractual and disclosure requirements for sophisticated clients. Should the ''arm's-length contract'' or any of the other provisions be retained? Are certain conditions on performance fee contracts necessary to protect even clients the Commission presumes are able to protect themselves? Are there alternative conditions that should be considered?

B. Qualified Clients

As noted above, in adopting rule 205–3 in 1985, the Commission concluded that clients having a net worth in excess of $1,000,000, or assets under management of at least $500,000, do not need the full protections provided by the Advisers Act's restrictions on performance fee arrangements.[24] The Commission believes that a similar finding by the Commission would support the proposed expansion of the exemption under the new authority granted the Commission last year in section 205(e) of the Advisers Act.[25]

The Commission recognizes that, since 1985, the net worth and assets under management thresholds have been affected by inflation: $1,000,000 in 1985 dollars is now worth approximately $1,521,000; and $500,000 in 1985 dollars is now worth approximately $760,000. The Commission therefore proposes to increase the amounts of the net worth and assets under management tests from $1,000,000 and $500,000 to $1,500,000 and $750,000, respectively. This increase is not intended to reduce the number or to alter the types of clients with which an adviser may enter into a performance fee arrangement, but to reflect the effects of inflation on the rule.

The Commission also is proposing to permit advisers to enter into performance fee contracts with clients who are ''qualified purchaser[s]'' under section 2(a)(51)(A) of the Investment Company Act.[26] The 1996 Act amended the Investment Company Act, among other things, to add new section 3(c)(7), which exempts from regulation under the Investment Company Act certain investment pools whose interests are not offered to the public and whose shareholders consist primarily of ''qualified purchasers,'' including individuals with at least $5,000,000 of investments.[27] Although, in most cases, persons who would be qualified purchasers under section 2(a)(51)(A) would be eligible to enter into a performance fee contract with advisers under rule 205–3, even as proposed to be amended, in some cases, such persons would not.[28] Therefore, the Commission proposes to add ''qualified purchasers'' as eligible clients under the rule so that an investor who meets the eligibility requirements of section 3(c)(7) also could enter into a performance fee arrangement outside the context of a section 3(c)(7) company.[29]

Under the proposed amendments, clients who satisfy the new eligibility criteria contained in rule 205–3 would be referred to as ''qualified client[s].'' [30] Comment is requested on the revised criteria for entering into a performance fee contract and whether the Commission should consider alternative criteria for qualified clients. Are the criteria sufficient for the Commission to make the required finding under section 205(e) that qualified clients do not need the protections of the statutory prohibition on performance fee arrangements? Rather than including the qualified purchaser as the third alternative criterion, should the Commission use the qualified purchaser threshold in lieu of the other two tests?

In addition to criteria such as financial sophistication and knowledge and experience in financial matters, section 205(e) permits the Commission

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[20] *See* Protecting Investors, *supra* note 9, at 245.

[21] Advisers are regarded as fiduciaries who are required to deal fairly with their clients and to make full and fair disclosure of, among other things, their compensation agreements. *See* SEC v. Capital Gains Research Bureau, 375 U.S. 180, 194 (1963). In addition, advisers registered with the Commission are required to provide their clients with a brochure describing their fee arrangements. *See* Part II of Form ADV.

[22] Section 206 of the Advisers Act [15 U.S.C. 80b-6].

[23] The proposed amendments also would eliminate paragraph (h) of the current rule, which states that ''[a]n investment adviser entering into or performing an investment advisory contract under this rule is not relieved of any obligations under section 206 of the Advisers Act or of any other applicable provisions of the federal securities laws.'' The Commission believes that the proposed rule amendments by their terms provide an exemption only from section 205(a)(1), and that separate reference to section 206 and other provisions of the federal securities laws is unnecessary. By proposing to eliminate this reference, the Commission does not intend in any way to suggest that compliance with the amended rule would relieve advisers of any obligations under section 206 of the Advisers Act or of any other applicable provisions of the federal securities laws.

The Commission further notes that advisers entering into performance fee arrangements with employee benefit plans covered by the Employee Retirement Income Security Act of 1974 (''ERISA'') are subject to the fiduciary responsibility and prohibited transaction provisions of ERISA. 29 U.S.C. 1001–1461. The proposed amendments to rule 205–3 would not affect an adviser's obligation to comply with ERISA. Issues involving performance fee arrangements under ERISA are within the jurisdiction of the Department of Labor, which is responsible for administering ERISA's fiduciary provisions and has addressed performance fee arrangements in a number of advisory opinions under ERISA. U.S. Department of Labor Advisory Opinion No. 89–28A (Sept. 25, 1989); U.S. Department of Labor Advisory Opinion 86–21A (Aug. 29, 1986); U.S. Department of Labor Advisory Opinion 86–20A (Aug. 29, 1986).

[24] *See supra* note 7 and accompanying text.

[25] *See supra* note 14 and accompanying text.

[26] *See supra* note 1.

[27] 15 U.S.C. 80a–3(c)(7).

[28] For example, in determining the amount of investments for purposes of the definition of qualified purchaser, only outstanding indebtedness incurred to acquire or for the purpose of acquiring the investments must be deducted. Rule 2a51–1(e) of the Investment Company Act (17 CFR 270.2a51–1(e)). *See also* Privately Offered Investment Companies, Investment Company Act Release No. 22597 (Apr. 3, 1997) (62 FR 17512 (Apr. 9, 1997)). Thus, a person with less than $750,000 in assets under management could have over $5,000,000 of investments, but a net worth of less than $1,500,000 because of other debt. Under the proposed rule amendments, such a person would be eligible to enter into a performance fee contract under rule 205–3.

[29] Under section 205(b)(4)] of the Advisers Act [15 U.S.C. 80b–5(b)(4)], section 3(c)(7) companies may enter into performance fee contracts without relying on rule 205–3. Each investor in a section 3(c)(7) company need not satisfy the eligibility criteria for an adviser to charge performance fees to the section 3(c)(7) company. *See infra* note 36.

[30] Proposed rule 205–3(d)(1).

to consider whether a client may not need the protections of the Advisers Act by virtue of its relationship with the adviser.[31] Should the Commission exempt advisers that have a pre-existing relationship with clients that suggests that the abuses Congress sought to prevent by prohibiting performance fee arrangements are unlikely to occur? If so, what should be the nature of those relationships?[32]

Should the Commission revise the criteria to prevent the net worth and assets under management criteria from becoming less meaningful as a result of inflation? Should the criteria be indexed to prevent future effective lowering of the amounts? Should the Commission adopt more detailed criteria to assure the financial sophistication of qualified clients if the objective thresholds are effectively decreased as result of inflation?

C. Identification of the Client[33]

Rule 205–3 provides that with respect to certain clients entering into performance fee contracts with an adviser—private investment companies,[34] registered investment companies, and business development companies—the adviser must ''look through'' the legal entity to determine whether each equity owner of the company would be a qualified client.[35] The proposed amendments would retain the ''look through'' provision[36] and clarify that any equity owners that are not charged a performance fee would not be required to meet the qualified client test.[37]

Comment is requested whether this ''look through'' provision should continue to be included in rule 205–3. The Commission also requests comment concerning whether the rule should specifically address the application of the ''look through'' provision to other entities.

D. Transition Rule

The proposed amendments would add a transition rule permitting investment advisers and their clients to maintain their existing performance fee arrangements notwithstanding the clients' failure to meet the eligibility criteria after the thresholds increase to $750,000 and $1,500,000.[38] Such arrangements could continue under the transition rule if they were entered into before the effective date of the amendments to the rule and they satisfied the requirements of the rule as in effect on the date that they were entered into. A new party to an existing arrangement, however, would be required to satisfy the new qualified client test.

E. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule amendments that are the subject of this Release, to suggest additional changes (including changes to the provisions of the rule that the Commission is not proposing to amend), or to submit comments on other matters that might have an effect on the proposals described above, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit their proposed rule text.

III. Cost-benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The Commission notes that the proposed rule amendments are pursuant to new authority granted to it by Congress in the 1996 Act.

The proposed amendments would benefit investment advisers and their qualified clients by providing more flexibility to enter into performance fee arrangements. Specifically, investment advisers and their qualified clients could enter into such arrangements without being subject to prescribed compensation calculations and client disclosures. Thus, the total number of performance fee arrangements may increase. On the other hand, the proposed increase in the thresholds for determining eligibility under the rule may cause the number of eligible clients to decrease,[39] and, as a result, reduce the total number of performance fee arrangements.[40] The Commission, however, does not have information from which to analyze the precise effect of the proposed amendments on the number of performance fee arrangements. Comment is requested on whether the proposed amendments would increase or decrease the number of performance fee arrangements.

To the extent that the proposed rule amendments increase the number of performance fee arrangements, advisers and clients may benefit overall.[41] For example, proponents of performance fees have argued that these arrangements may benefit both parties to the advisory contract because linking advisory compensation to performance may result in a closer alignment of the goals of the adviser and the client.[42] If the goals of both parties coincide, then

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[31] *See supra* note 14.

[32] In the context of the definition of investment adviser representative, the Commission has proposed that natural persons with certain business or familial relationships with the supervised person would not need the protection of state qualification requirements. Exemption for Investment Advisers Operating in Multiple States; Revisions to Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1681 (Nov. 13, 1997).

[33] The following discussion of the identity of the ''client'' is relevant only for purposes of this rule and not for purposes of section 206 of the Advisers Act (15 U.S.C. 80b–6).

[34] The definition of ''private investment company'' included in paragraph (g)(1) of the current rule [17 CFR 275.205–3(g)(1)] would continue in the amended rule to refer solely to those companies excepted from the definition of investment company under section 3(c)(1) of the Investment Company Act [15 U.S.C. 80a–3(c)(1)]. Reference to section 3(c)(7) is unnecessary because, as noted above, companies excepted from the definition of investment company under this provision also are excepted from the performance fee prohibition pursuant to section 205(b)(4) of the Advisers Act (15 U.S.C. 80b–5(b)(4)).

[35] Rule 205–3(b)(2) [17 CFR 275.205–3(b)(2)].

[36] Proposed rule 205–3(b). The Commission is not proposing to extend the ''look through'' provision of rule 205–3 to section 3(c)(7) companies. In the 1996 Act, Congress explicitly excepted section 3(c)(7) companies from the prohibition on performance fees having concluded that ''investors in a qualified purchaser pool are sophisticated enough to be allowed to enter into a fee arrangement that is not a fulcrum fee.'' *See* S. REP. NO. 293, 104th Cong., 2d Sess. 11 (1996).

[37] Proposed rule 205–3(b). *See, e.g.*, Hellmold Associates, Inc. (pub. avail. Dec. 18, 1992) (adviser may receive performance fee from certain limited partners when the fee would be based solely on a limited partner's capital account and not based on the overall performance of the partnership). *See also* Compass Investors (pub. avail. Dec. 18, 1996).

The proposed amendments would retain the provision in rule 205–3 that an equity owner who is the investment adviser entering into the performance fee contract need not be a qualified client.

[38] Proposed rule 205–3(c).

[39] According to data from the 1995 Survey of Consumer Finances conducted by the Federal Reserve Board, approximately 1,100,000 households have net worth between $1,000,000 and $1,500,000. This figure, however, represents the net worth of households and not the individual persons who might be clients. Furthermore, the survey results do not address clients that are not natural persons.

[40] The Commission knows of no information concerning the incidence of performance fee arrangements in the United States, and requests the submission of data concerning such incidence. Performance fee arrangements, however, appear to be accepted practices in many other countries. *See* International Survey of Investment Adviser Regulation 15 (Marcia L. MacHarg & Roberta R. W. Kameda eds., 1994) (noting that performance fees generally are permitted in Australia, Brazil, Canada (Ontario, with client's written consent), France, Germany, Italy, Japan, Spain, Switzerland (up to 20% of net capital gain), the United Kingdom and Venezuela).

[41] The Commission's Division of Investment Management discussed the advantages and disadvantages of performance fees in more detail in its 1992 study. Protecting Investors, *supra* note , at 239–40.

[42] Richard Grinold & Andrew Rudd, *Incentive Fees: Who Wins? Who Loses?*, 43 Fin. Analysts J. 27, 37 (Jan.–Feb. 1987); Harvey E. Bines, The Law of Investment Management ¶ 5.03[2][b], at 5–43 (1978 & Supp. 1986) (observing that the principal justification for performance fees is that they permit the uncertainty in the quality of the product—the management of the portfolio—to be shared between the adviser and the client).

the benefits of performance fee arrangements would include fewer conflicts of interest in advisory relationships. Better alignment of the goals of the adviser and the client might also result in more efficient investing and allocation of capital.

Proponents also claim that performance fees may encourage better performance by rewarding good performance rather than linking compensation and assets under management as in more traditional arrangements.[43] Thus, such arrangements may produce more cost-effective results than arrangements with more traditional fee structures.

In addition, advocates of the increased use of performance fees assert that they may encourage the establishment of new advisory firms.[44] Performance fees could result in greater competition and produce a wider array of investment advisers and services and lower overall advisory costs. Proponents also state that performance fees provide an incentive for investment advisers to service smaller accounts that otherwise might be less attractive to the advisers.[45] Furthermore, supporters argue that performance fees permit advisers to focus on a smaller number of clients than they otherwise would under traditional compensation arrangements by allowing them to generate sufficient income without the necessity for a large asset base.[46] Such results also could increase the variety of services provided to a wider array of clients, and decrease advisory costs overall.

The increased use of performance fees, however, also may produce some costs to advisory clients and the economy in general. Opponents of advisory fees have cited the potential for the adviser under a performance fee arrangement to engage in excessive risk taking with respect to the client's account.[47] Excessive risk taking may result in unexpected losses to the clients, which may prompt investors to withdraw from the market and discourage capital formation. Critics also challenge whether there is any basis, theoretical or analytical, for believing that performance fees will improve performance.[48] In addition, some detractors have expressed concern that performance fees might result in discrimination against clients that do not pay performance fees. One form of such discrimination may be advisers devoting more of their time and resources to clients that pay such fees.[49] Such an argument relies on an assumption, which may not be necessarily correct, that an adviser cannot increase the amount of its advisory resources. Nonetheless, this argument notes the potential for an increase in conflicts of interest on the part of advisers.[50]

The arguments for and against performance fee arrangements provide no definitive answers concerning their effect on advisers, clients and the markets in general. The costs and benefits of performance fee arrangements in general are difficult to quantify because of their theoretical nature. Comment is requested on whether the benefits and costs could be quantified.

The Commission has determined to permit clients who are financially sophisticated or have the resources to obtain sophisticated financial advice to weigh the costs and benefits of entering into such arrangements and to determine for themselves whether to enter into such contracts. Although an increase in the use of performance fees may impose some overall costs, such costs could result from the existing rule 205–3 even if the Commission did not adopt the proposed amendments.

With respect to the rule amendments at issue, the Commission believes that the proposed amendments would not impose any additional costs on investment advisers or their clients. Once the adviser determines that a client is qualified, the rule does not prescribe detailed contractual requirements or require specific disclosures to clients. The Commission has observed over the years that the detailed conditions of the current rule raise numerous interpretive issues.[51] The proposed rule should reduce the costs of establishing and monitoring compliance with the current rule.

Comment is requested on this cost-benefit analysis. Commentators are requested to provide views and empirical data relating to any costs and benefits associated with the proposed rules and performance fees in general.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also is requesting information regarding the potential effect of the proposed rule amendments on the economy on an annual basis. Commentators should provide empirical data to support their views.

IV. Summary of Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding proposed amendments to rule 205–3 under the Advisers Act. The following summarizes the IRFA.

As set forth in greater detail in the IRFA, the 1996 Act added section 205(e) to the Advisers Act, which authorizes the Commission to exempt conditionally or unconditionally from the performance fee prohibition contained in section 205(a)(1) of the Advisers Act advisory contracts with persons that the Commission determines do not need the protections of the prohibition. The IRFA states that the proposed rule amendments would liberalize rule 205–3, which permits performance fees to be charged to sophisticated clients by eliminating required contract terms and disclosures, update the current criteria for determining eligible clients to reflect the effects of inflation on the current assets under management and net worth tests, and add a new category of eligible clients based upon the definition of ''qualified purchaser'' in section 2(a)(51)(A) of the Investment Company Act.

The IRFA sets forth the statutory authority for the proposed rule amendments. The IRFA also discusses the effect of the proposed rule amendments on small entities. For the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity (i) if it manages assets of $50 million or less, in discretionary or non-

[43] *See, e.g.*, Stephen Lofthouse, *A Fair Day's Wages for a Fair Day's Work*, 4 Journal of Investing 74, 76 (Winter 1995); Grinold & Rudd, *supra* note 42, at 37; Bines, *supra* note 42, at 5–36 to 5–37.

[44] Julie Roher, *The Great Debate Over Performance Fees*, 17 Institutional Investor 123, 124 (Nov. 1983) (stating that new firms can begin generating profits before attracting a large asset base).

[45] *See, e.g., id.*

[46] *See, e.g., id.*

[47] Lofthouse, *supra* note 43, at 77; Roher, *supra* note 44, at 127.

[48] Lofthouse, *supra* note 43, at 79 (citing the lack of empirical data); Roher, *supra* note 44, at 128 (noting that incentives for good performance already exist because advisers are compensated on the basis of account size and must perform well to retain their clients); Bines, *supra* note 42, at 5–36 (indicating that there is no demonstrable connection between performance fees and superior performance).

[49] *See, e.g.*, Lofthouse, *supra* note 43, at 77.

[50] *See* In re McKenzie Walker Investment Management, Inc., Investment Advisers Act Release No. 1571 (July 16, 1996) (investment adviser favoring its performance-fee clients in the allocation of hot initial public offerings).

[51] *See, e.g.*, Valuemark Capital Management, Inc. (pub. avail. June 4, 1997) (limited partners purchasing or redeeming mid-year immaterial if performance fee based on performance of partnership over a period of at least one year); Securities Industry Association (pub. avail. Nov. 18, 1986) (use of rolling one-year periods after initial one-year period); P.E. Becker, Inc. (pub. avail. July 21, 1986) (individual limited partners may be considered the ''client'' for purposes of the ''arm's-length'' negotiation requirement).

discretionary accounts, as of the end of its most recent fiscal year or (ii) if it renders other advisory services, has $50,000 or less in assets related to its advisory business.[52] The Commission estimates that approximately 17,650 investment advisers are small entities.[53] The Commission does not have information, however, from which to estimate either the number of clients of small entities who would satisfy the tests of sophistication or the number of such clients who would enter into performance fee arrangements under the rule. The Commission, however, believes that it would be reasonable to estimate that the overall effect of the proposed amendments to the rule would be to increase the use of the exemption by small entities, and that the economic effect on small entities may be significant.

The IRFA states that the proposed rule amendments would not impose any new reporting, recordkeeping or compliance requirements, and that the Commission believes that no rules duplicate, overlap or conflict with the proposed rule amendments.

The IRFA discusses the various alternatives considered by the Commission in connection with the proposed rule amendments that might minimize the effect on small entities, including (a) the establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (b) the clarification, consolidation or simplification of compliance and reporting requirements under the rule amendments for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule or any portion of the rule, for small entities. As discussed in more detail in the IRFA, the Commission believes that it would be inconsistent with the purposes of the Advisers Act to exempt small entities from the proposed rule amendments or to use performance standards to specify different requirements for small entities. Different compliance or reporting requirements for small entities are not necessary because the proposed rule amendments do not establish any new reporting, recordkeeping or compliance requirements. The Commission has determined that it is not feasible to further clarify, consolidate or simplify the proposed rule amendments for small entities.

The IRFA includes information concerning the solicitation of comments with respect to the IRFA generally, and in particular, the number of small entities that would be affected by the proposed rule amendments. A copy of the IRFA may be obtained by contacting Kathy D. Ireland, Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 10–6, Washington, DC 20549.

[52] Rule 275.0–7 [17 CFR 275.0–7]. In January 1997, the Commission proposed to revise this definition of ''small entity.'' *See* Definitions of ''Small Business'' or ''Small Organization'' Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933, Release Nos. 33–7383, 34–38190, IC–22478, and IA–1609 (Jan. 22, 1997) (62 FR 4106 (Jan. 28, 1997)). The Commission expects to adopt a revised definition of small investment adviser for Regulatory Flexibility Act purposes to reflect the Coordination Act.

[53] This estimate of the number of small entities was made for purposes of the Final Regulatory Flexibility Analysis for the rules implementing the Coordination Act. *See* Implementing Release, *supra* note 15, at nn.189–190 and accompanying text. Under rule 203A–5 of the Advisers Act, all investment advisers registered with the Commission were required to file a completed Form ADV–T with the Commission by July 8, 1997, indicating whether they remain eligible for Commission registration. Of the 23,350 Commission-registered investment advisers, approximately 7,200 advisers indicated that they remain eligible for Commission registration, 10,600 advisers withdrew their registrations, and 5,800 advisers did not file their Form ADV–T. The Commission believes that most of the investment advisers that did not file the Form ADV–T are either no longer in the advisory business or no longer eligible to register with the Commission. The Commission expects to cancel the registrations of most of these investment advisers. The Commission also expects to adopt a revised definition of small entity for purposes of the Regulatory Flexibility Act. *See supra* note 52. Therefore, the Commission plans to revise its estimate of the number of advisers that are small entities after the transition is complete so that the Commission would have more accurate information to determine the number of small entities under the new definition of that term.

V. Statutory Authority

The Commission is proposing amendments to rule 205–3 pursuant to the authority set forth in section 205(e) of the Investment Advisers Act of 1940 [15 U.S.C. 80b-5(e)].

List of Subjects in 17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 is revised to read as follows:

Authority: 15 U.S.C. 80b-2(a)(17), 80b-3, 80b-4, 80b-6(4), 80b-6a, 80b-11, unless otherwise noted.

Section 275.203A–1 is also issued under 15 U.S.C. 80b-3a.

Section 275.203A–2 is also issued under 15 U.S.C. 80b-3a.

Section 275.204–2 is also issued under 15 U.S.C. 80b-6.

Section 275.205–3 is also issued under 15 U.S.C. 80b-5(e).

2. Section 275.205–3 is revised to read as follows:

§ 275.205–3 Exemption from the compensation prohibition of section 205(a)(1) for investment advisers.

(a) *General.* The provisions of section 205(a)(1) of the Act (15 U.S.C. 80b-5(a)(1)) will not be deemed to prohibit any investment adviser from entering into, performing, renewing or extending an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client, *Provided,* That the client entering into the contract subject to this section is a qualified client, as defined in paragraph (d)(1) of this section.

(b) *Identification of the client.* In the case of a private investment company, as defined in paragraph (d)(3) of this section, an investment company registered under the Investment Company Act of 1940, or a business development company, as defined in section 202(a)(22) of the Act (15 U.S.C. 80b-2(a)(22)), each equity owner of any such company (except for the investment adviser entering into the contract and any other equity owners not charged a fee on the basis of a share of capital gains or capital appreciation) will be considered a client for purposes of paragraph (a) of this section.

(c) *Transition rule.* An investment adviser that entered into a contract before [insert the effective date of the final rule] and satisfied the conditions of this section as in effect on the date that the contract was entered into will be deemed to satisfy the conditions of this section; *Provided, however,* that this section will apply with respect to any natural person or company who is not a party to the contract prior to and becomes a party to the contract after [insert the effective date of the final rule].

(d) *Definitions.* For the purposes of this section:

(1) The term *qualified client* means a natural person who or a company that:

(i) Immediately after entering into the contract has at least $750,000 under the management of the investment adviser; or

(ii) The investment adviser entering into the contract (and any person acting on his behalf) reasonably believes, immediately prior to entering into the contract, either:

(A) Has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than $1,500,000 at the time the contract is entered into; or

(B) Is a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(51)(A)) at the time the contract is entered into.

(2) The term *company* has the same meaning as in section 202(a)(5) of the Act (15 U.S.C. 80b-2(a)(5)), but does not include a company that is required to be registered under the Investment Company Act of 1940 but is not registered.

(3) The term *private investment company* means a company that would be defined as an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) but for the exception provided from that definition by section 3(c)(1) of such Act (15 U.S.C. 80a-3(c)(1)).

Dated: November 13, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30295 Filed 11–18–97; 8:45 am]

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Federal Register

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November 19, 1997

Part IV

Environmental Protection Agency

Termilind Limited; Notice and Order of Revocation of Registrations; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP–68017; FRL–5755–7]

Termilind Limited; Notice and Order of Revocation of Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Notice and Order of Revocation of Registrations and Final Determination Governing Sale and Use of Existing Stocks.

SUMMARY: In March of 1996, EPA issued registrations for two end use napthalenaecetic acid (NAA) products, Alphaspra 200 (EPA Registration Number 67223-2) and Alphaspra 800 (EPA Registration Number 67223-1) to Termilind Limited (Termilind). On August 2, 1996, Amvac Chemical Corporation (Amvac) filed a petition to cancel the Termilind registrations based upon assertedly false certifications that Termilind would use Amvac-registered material to formulate its products. Amvac filed a second petition in October of 1996 asking EPA to deny Termilind's application for a technical NAA registration based upon an assertion that Termilind misappropriated data to support the application. EPA has determined that Termilind submitted misleading materials in support of its applications for end-use registrations, and that the registrations would not have been granted absent this misleading information. On August 6, 1997, EPA issued a Decision granting Amvac's petition in this regard and revoking the end-use registrations. In that same Decision, EPA denied Amvac's petition to deny Termilind's application for technical registration. The revocation Decision, and a subsequent determination concerning the sale and distribution of existing stocks of the revoked products, are published in this Notice.

DATES: The revocation Decision was effective as to Termilind on August 6, 1997. The Decision and existing stocks determination are effective as to all other persons on November 19, 1997. Any person interested in requesting an informal hearing should submit such a request by January 20, 1998.

ADDRESSES: Request for a formal hearing should be addressed to: Robert Perlis, Office of General Counsel (2333), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: James J. Jones, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 713, 1921 Jefferson Davis Hwy., Arlington, VA, 703-305-5446, e-mail:jones.james@epamail.gov.

SUPPLEMENTARY INFORMATION: Unit I. of this document contains the Agency's August 6, 1997 decision on the petition to revoke the registrations, and Unit II. consists of the Agency's existing stocks determination.

I. Decision on Amvac's Petition to Revoke Termilind Limited's Registrations

Petitioner Amvac Chemical Corporation (Amvac) seeks immediate revocation of respondent Termilind Limited's (Termilind) registrations for two end use naphthaleneacetic acid (NAA) registrations, Alphaspra 200 (EPA Registration No. 67223-2) and Alphaspra 800 (EPA Registration No. 67223-1). Amvac also seeks revocation of Termilind's technical NAA registration, (EPA Registration No. 67223-22). Amvac claims that the end use registrations were obtained through willful misrepresentation of the source of technical NAA, and that the technical registration was obtained through the submission of data ''stolen'' or ''misappropriated'' from Amvac. Amvac asserts, as well, that the willful nature of Termilind's acts authorizes summary revocation of the subject registrations without resort to the procedural requirements of section 6(b), the cancellation provision of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). We grant the petition with respect to the two end use registrations, and deny the petition with respect to the technical registration.

Legal Background

The sale, distribution and use of pesticides in the United States is regulated by the Federal Insecticide, Fungicide, and Rodenticide Act. 7 U.S.C. 136-136y. Under FIFRA, with certain limited exceptions, a pesticide may not be sold or distributed unless it is registered. *Id*. 136a(a), 136j(a)(1)(A). In order for a pesticide to qualify for registration, the Environmental Protection Agency (EPA) must determine that it will not cause unreasonable adverse effects on the environment when used in accordance with widespread and commonly recognized practice. *Id*. 136a(c)(5)(C)-(D). To make this finding, EPA reviews data on product chemistry, toxicology, and environmental fate, among other subjects. See 40 CFR part 158 (data requirements for registration). The data reviewed must be supplied by the registrant; it is not generated by the Agency. *Id*. Because the volume of data received and reviewed by the Agency is extremely large, EPA is unable to investigate each statement, study and item of data received for potential fraud or misrepresentation. Thus, to a great degree, the Agency must rely on the good faith and integrity of registrants if it is to fulfill its mandate of protecting human health and the environment from unreasonable risk.

A registrant can fulfill its obligation to submit much of the data required for registration by formulating its product with an existing registered pesticide purchased from another producer. See 7 U.S.C. 136a(c)(2)(D); 40 CFR 152.85 (Formulators' exemption).[1] The premise behind the formulators' exemption is that the purchase price of the registered material compensates the original registrant for the cost of data generation. See *id*.

In the case of certifying eligibility for the formulators' exemption, good faith on the part of applicants is critical. When an applicant certifies that it will formulate its product using a registered pesticide as the active ingredient, it is excused from the requirement of submitting data pertaining to the safety of that ingredient. See *id*. Instead, the Agency bases its risk analysis of that ingredient on the data received from the registrant of the original product. If the applicant does not then use the registered product cited, the risk assessment performed by the Agency, and any safety finding premised upon it, are unreliable--they may not reflect the nature or contents of the new product. Thus the Agency's ability to carry out its mandate of protecting human health and the environment is undermined.

Regulatory History

Termilind cited Amvac Chemical Corp. of Los Angeles California as the source of the technical NAA active ingredient in

[1] 7 U.S.C. 136a(c)(2)(D) reads as follows:

Exemption--no applicant for registration who proposes to purchase a registered pesticide from another producer in order to formulate such purchased pesticide into the pesticide that is subject of the application shall be required to --

(i) submit or cite data pertaining to such purchased product; or

(ii) offer to pay reasonable compensation otherwise required by paragraph (l)(D) of this subsection for the use of any such data.

40 CFR 152.85 reads as follows:

(a) FIFRA section 3(c)(2)(D) excuses an applicant from the requirement to submit or cite data pertaining to the safety of any ingredient (or mixture of ingredients) contained in his product that is derived solely from one or more EPA-registered products which the applicant purchases from another producer.

(b) If the product contains one or more ingredients eligible for the formulators' exemption, the applicant need not comply with the requirements of §§ 152.90 through 152.96 with respect to any data requirements pertaining to the safety of any such ingredient, provided that he submits to the Agency a certification statement containing the following information . . .

(1) Identification of the applicant, and of the product by EPA registration number or file symbol;

(2) Identification of each ingredient in the pesticide that is eligible for the formulators' exemption, and the EPA registration number of the product that is the source of that ingredient;

(3) A statement that the listed ingredients meet the requirements for the formulators' exemption;

(4) A statement that the applicant has submitted (either previously or with the current application) a complete, accurate and current Statement of Formula; and

(5) The name, title and signature of the applicant or his authorized representative and the date of signature.

(c) An applicant for amended registration is not required to submit a new formulators' exemption statement, if the current statement in Agency files is complete and accurate.

applications for two end use NAA registrations submitted to EPA in September 1995. Termilind also certified to EPA that it was eligible for the formulators' exemption. On the basis of that information, EPA granted the two registrations in March of 1996.

In July 1996, EPA Region X issued a Stop Sale, Use, or Removal Order (SSURO) prohibiting the sale or distribution of Termilind's two end use NAA products. Records obtained by EPA from an Oregon Department of Agriculture investigation revealed that technical NAA product had been shipped from Seoul, South Korea by Inchema Company, to Oregon California Chemicals Inc. (Or-Cal), a contractor for Termilind. EPA issued the SSURO on the grounds that the Agency believed that ''the supplier of [NAA] for the [end use products] is different than what was listed in [Termilind's] confidential statement of formula [CSF] for these products'' in violation of FIFRA section 12(a)(1)(C) (unlawful to distribute or sell pesticide composition of which differs at time of distribution from composition described in CSF). 7 U.S.C. 136j(a)(1)(C). The order remained in effect until September 23rd, when Termilind amended the CSFs of the two products to reflect the use of its own technical NAA, which was registered by EPA that same month. This matter was followed up with a Warning Letter, mailed to Termilind on December 16, 1996, in which Region X confirmed the Agency's conclusion that a violation of FIFRA section 12(a)(1)(C) had occurred. *Id*.

On August 2, 1996, Amvac submitted its first petition for revocation, which concerned the two Termilind end use registrations. In the petition, Amvac claimed that the registrations were issued based on ''false certifications to EPA. . . that Termilind's two products would be formulated from Amvac's EPA-registered technical naphthalene acetic acid (NAA) and thus qualify for the formulators' exemption.'' Amvac stated that it was the only source of registered technical NAA, and that although Termilind cited Amvac as its source of technical NAA in the registration materials submitted for two end use products, neither Amvac nor any of its distributors had sold any technical NAA to Termilind. Amvac claimed, as well, that neither it nor its distributors had discussed sales of technical NAA with Termilind.

In early October, shortly after the SSURO was lifted, Amvac submitted a second petition for revocation, this one concerning the registration of Termilind's technical NAA product. In that petition Amvac asserted that ''Termilind willfully misappropriated confidential business information (CBI) to obtain the Technical Registration,'' and requested that the registration be revoked on that basis.

Amvac asserts that in 1994 it entered into an arrangement with Shin Young C-Tech Co., Ltd. (C-Tech), a South Korean company, and its U.S. agent, Inchema, Inc., whereby C-Tech/Inchema would manufacture technical NAA for Amvac. In its second petition, Amvac stated that it supplied CBI to C-Tech/Inchema for the purposes of carrying out this business arrangement. The CBI was allegedly the subject of a confidentiality agreement, pursuant to which C-Tech/Inchema was forbidden to disclose it to third parties for any purpose. It is this CBI which Amvac claims Termilind ''misappropriated'' and submitted to EPA in support of a technical NAA registration.

Amvac failed to serve copies of either petition on Termilind, arguing in each that the willful nature of Termilind's conduct warranted summary revocation, without prior notice or an opportunity to be heard. Amvac cited section 558 of the Administrative Procedures Act (APA) as authority for this proposition.[2]

EPA forwarded copies of the two petitions to Robert Fisher, Termilind's regulatory agent. A copy of the first petition was mailed to Mr. Fisher on September 5, 1996; a copy of the second was sent on November 25. Termilind did not respond to either petition. On December 6, EPA formally invited Termilind to respond to the allegations contained in the two petitions and set a deadline of December 20 for receipt of a response.

After receiving and reviewing Termilind's response, EPA determined that further development of both legal and factual issues was warranted prior to issuing a decision. EPA sent an identical set of questions to each party and, again, invited them to respond. Via the same letter EPA established a series of procedures to govern communications between Agency personnel and representatives of Amvac or Termilind concerning the merits of the ongoing dispute.

In addition to petitioning EPA to revoke Termilind's registrations, Amvac has also initiated legal proceedings against Termilind in the United States District Court for the District of Oregon, seeking, among other things, a preliminary injunction to enjoin Termilind from maintaining any registrations for products containing NAA, and to prohibit Termilind from selling, marketing or distributing any product containing NAA. By order dated January 17, 1997, Amvac's motion was denied. The issue of whether Termilind misappropriated CBI owned by Amvac and submitted such in support of its technical NAA registration is still before the District Court.

Based on the materials submitted by both parties in response to the questions posed by the Agency, EPA makes the following findings of fact:

Findings of Fact

(1) Respondent Termilind Ltd. is a person and a registrant as defined by FIFRA. (7 U.S.C. 136(s), (y))

(2) Petitioner Amvac Chemical Corp. is a person and a registrant as defined by FIFRA. (7 U.S.C. 136(s), (y))

(3) Jerry Fitzsimmons is the president of Termilind, Ltd. (Affidavit of Jerry Fitzsimmons, November 6, 1996, at 1)

(4) J. R. Fisher is the principal of Fisher and Associates, a regulatory agent providing services to companies seeking registration of products with EPA. (Affidavit of J. R. Fisher, November 6, 1996, at 1)

(5) J. R. Fisher has been a regulatory agent providing services to companies seeking registration of products with the EPA since 1981. (Affidavit of J. R. Fisher, December 31, 1996, at 2)

(6) J. R. Fisher prepared and submitted the application materials for Termilind's end use registrations. (Affidavit of J. R. Fisher, December 31, 1996, at 4)

(7) Shin Young C-Tech Co., Ltd. (C-Tech) is a South Korean company. (Affidavit of Eric Wintemute at 4)

(8) Inchema, Inc. is the United States Agent for C-Tech. (Affidavit of Eric Wintemute at 5)

(9) In or about July 1995, J. R. Fisher and Jerry Fitzsimmons met with Hans Wessel and Steve Shim of Inchema regarding the purchase of technical NAA. (Affidavit of J. R. Fisher, December 31, 1996, at 2)

(10) Inchema had manufactured technical NAA for Amvac. (Affidavit of Eric Wintemute at 5)

(11) Amvac rejected the last batch of NAA produced by Inchema/C Tech. (Affidavit of J. R. Fisher, November 6, 1996, at 2)

(12) Termilind was aware that the technical NAA it purchased from Inchema/C-Tech had been rejected by Amvac. (Affidavit of J. R. Fisher, November 6, 1996, at 2)

(13) Termilind cited Amvac Chemical Corp. of Los Angeles California as the source of the technical NAA active ingredient in its applications for two end use NAA registrations, submitted to EPA in September 1995. (Affidavit of J. R. Fisher, November 6, 1996, at 2; Warning Letter issued to Termilind Ltd. by EPA Region 10, December 16, 1996) These registrations were granted in March of 1996. (Alphaspra 800, EPA Registration No. 67223-1 granted March 15, 1996; Alphaspra 200, EPA Registration No. 67223-2 granted March 26, 1996)

(14) Termilind certified that it was eligible for the formulators' exemption, 7 U.S.C. 136a(c)(2)(D); 40 CFR 152.85. (Formulators' exemption statement submitted by Termilind)

(15) Termilind cited Amvac's product labels and material safety data sheet in applications for end use NAA registrations submitted to EPA in September 1995. (Affidavit of J. R. Fisher, December 31, 1996, at 3)

(16) Termilind had Inchema/C-Tech formulate unregistered technical NAA into end use product for import into the United States. These products bore Termilind's EPA registration number for the end use NAA product Alphaspra 800. (Affidavit of J. R. Fisher, November 6, 1996, at 2; affidavit of J. R. Fisher, December 31, 1996, at 4)

(17) Termilind did not obtain samples of, or perform any tests upon, the technical NAA product used to formulate the Alphaspra 800. (Affidavit of J. R. Fisher, December 31, 1996, at 3).

(18) Under 19 CFR 12.112, ''an importer desiring to import pesticide or devices into

[2] Section 558(c) of the APA reads in pertinent part:

Except in cases of willfulness or those in which public health, interest or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given--

(1) notice by the agency in writing of the facts or conduct which may warrant the action; and

(2) opportunity to demonstrate or achieve compliance with all lawful requirements.

the United States shall submit to the Administrator a Notice of Arrival of Pesticides and Devices . . . *prior* to the arrival of the shipment in the United States.'' (emphasis added). Termilind did not submit the required Notice of Arrival of Pesticides and Devices until 3 months after the shipment of NAA product had arrived in the United States from Korea. The Notice was filed only after EPA Region X discovered NAA product shipped from Korea in the possession of Or-Cal, a Termilind licensee. (Notice of Arrival submitted July 13, 1996)

(19) Termilind sold pesticide products formulated with unregistered Inchema/C-Tech NAA in the United States. (Stop Sale, Use, Or Removal Order issued to Termilind Ltd. by EPA Region 10, July 3, 1996; Warning Letter issued to Termilind Ltd. By EPA Region 10, December 16, 1996)

(20) Termilind never purchased or attempted to purchase Amvac's registered technical NAA from Amvac or any of its distributors. (Petition for revocation submitted to EPA by Amvac October 9, 1996 at 4)

Decision

I.

In its second petition, dated October 9, 1996, Amvac claims that Termilind's technical registration was obtained through the submission of data ''stolen'' or ''misappropriated'' from Amvac. On that basis, Amvac asserts that the Agency must revoke the technical registration. We deny this petition on jurisdictional grounds.

EPA does not have the powers of a court of general jurisdiction. Beyond the limited realm of data compensation, see 7 U.S.C. 136a(c)(1)(F); 40 CFR 152.99, the Agency has neither the expertise nor the authority to adjudicate conflicts regarding ownership of intellectual property. As noted above, this very matter is currently before the Federal District Court for the District of Oregon. A court of general jurisdiction is a more appropriate forum for the resolution of disputes of this nature. Accordingly, Amvac's second petition, seeking revocation of Termilind's technical registration, is denied.

II.

Amvac also seeks immediate revocation of Termilind's two end use registrations, claiming that they were obtained through willful misrepresentation of the source of the technical NAA used as the active ingredient in the products. But for the misrepresentation, Amvac contends, the registrations would not have been granted; thus they are void *ab initio*. Amvac also asserts that in light of Termilind's willful behavior, the Agency has inherent power to revoke these registrations without resort to section 6 of FIFRA. We agree.

As an initial matter, we must first address whether Termilind's conduct was willful. Willful misconduct had been defined as ''an intentional misdeed or such gross neglect of a known duty as to be the equivalent thereof.'' *Hutto Stockyard, Inc. v. USDA*, 903 F.2d 299, 304 (4th Cir. 1990 (quoting *Capitol Packing Co. v. United States*, 350 F.2d 67, 78-79 (10th Cir. 1965)); see also *Capital Produce Co. v. United States*, 930 F.2d 1077, 1079 (4th Cir. 1991). Termilind has not claimed that the material it purchased bore an Amvac EPA approved label identifying it as a registered product. Termilind did not purchase the material from Amvac or an Amvac distributor. Moreover, Termilind conceded that it was aware that the material had been rejected by Amvac. Nevertheless, Termilind identified Amvac's registered technical NAA as its source of active ingredient. Furthermore, Termilind certified that it was eligible for the formulators' exemption. This behavior constitutes willful misrepresentation.

Termilind cannot plausibly claim that its conduct was innocent. Its regulatory agent, J. R. Fisher, had 15 years experience in providing services to clients seeking registration of products with the EPA; he cannot credibly argue ignorance of the law in Termilind's defense. Moreover, common sense dictates that material purchased from a party other than the registrant or its distributors, that is known to have been rejected by the registrant, is not that registrant's registered material. Termilind does not claim that the material it purchased bore Amvac's label or EPA registration number. Under no view of the facts was it reasonable for Termilind to represent the product purchased from Inchema/C-Tech as Amvac registered material. Nevertheless, Termilind cited Amvac's product labels and material safety data sheet in its applications for end use registrations. This conduct was consistent with an intent to deceive the Agency about the origin of its technical material, as was Termilind's failure to submit a timely Notice of Arrival of Pesticides and Devices when the NAA material arrived from Korea. If the Notice had been filed in a timely fashion it might have drawn attention to the fact that Termilind, though citing Amvac Chemical Corp. of Los Angeles, California as its source of registered technical material, was receiving shipments of NAA product from Korea. We conclude that Termilind's misrepresentation was willful.[3]

We next address the Agency's authority to revoke a registration summarily, without resort to section 6 of FIFRA, where the registration was procured through willful misrepresentation.[4] As a general rule, it is well accepted that ''every tribunal, judicial or administrative, has some power to correct its own errors or otherwise appropriately to modify its judgement, decree or error.'' *Alberta Gas Chemicals, Ltd. v. Celanese Corp*., 650 F.2d 9, 13 (2d Cir. 1981) (quoting K. Davis, Administrative Law Treatise section 18.09 at 606 (1958); *Bookman v. United States*, 453 F.2d 1263, 1265 (Ct. Cl. 1972) (same); see also *Trujillo v. General Electric Co*., 621 F.2d 1084, 1086 (10th Cir 1980) (Administrative agencies have inherent authority to reconsider their decisions since power to decide carries with it power to reconsider) (quoting *Albertson v. Federal Communications Comm'n*., 182 F.2d 397, 399 (D.C. Cir. 1950)). Moreover, the Supreme Court and other courts have recognized that administrative agencies have implied authority to reconsider and correct errors, even where the applicable statue and regulations do not explicitly grant such powers. *Gun South Inc. v. Brady*, 877 F.2d 858, 862 (11th Cir. 1989) (listing cases). Courts have relied on this implied power in holding that agencies have the authority to revoke licenses improperly granted. See, e.g. *Kudla v. Mode*, 537 F.Supp 87, 89-90 (E.D. Mich. 1982) (improperly granted license revoked where licensee had failed to pass qualifying examination; procedural protections afforded by statute do not attach unless requirements for obtaining license have been met).

More specifically, courts have recognized that agencies have the inherent authority to correct errors and reverse judgements induced by fraud or misrepresentation. *Alberta Gas*, 650 F.2d at 13 (''It is a well established principle that an administrative agency may reconsider its own decisions'. . . . It is hard to imagine a clearer case for exercising this inherent power than when a fraud has been perpetrated on the tribunal in its initial proceeding'') (citations omitted); see also *Hand v. Matchett*, 957 F.2d 791, 794 (10th Cir. 1992) (self evident that university has inherent authority to revoke improperly awarded degree where fraud shown); *Colonial Penn Insurance Co. v. Coil*, 887 F.2d 1236, 1240 (revoking insurance settlement procured through fraud); In Re Berman, 97 S.E. 2d 232, 235 (N.C. 1957) (board has inherent power, independent of statutory authority, to revoke license improperly issued due to fraud or misrepresentation); *Schireson v. Shafer*, 47 A.2d 665, 667 (Pa 1946) (where license was procured by fraud licensing authority may revoke it regardless of fact that fraud is not specified as ground for revocation in statute); cf *Hazel-Atlas Glass Co. V. Hartford-Empire Co.*, 322 U.S. 238, 246 (1943) (reversing judgment in patent infringement suit where both Patent Office and Court of Appeals were influenced by fraudulent misrepresentations --''Public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.'') (overruled on other grounds). In the instant case, this rule supports the proposition that EPA has inherent authority to revoke Termilind's end use registrations. Indeed, courts have recognized that administrative agencies, as guardians of the public interest, have a duty to make corrections where they have relied on erroneous information. *Green County Planning Bd. v. Fed. Power Comm'n*, 559 F.2d 1227, 1233 (2d Cir. 1976; *Hudson River Fishermen's Ass'n v Federal Power Comm'n*, 498 F.2d 827, 833 (1974); *Borlem S.A. Empreedimentos Indutriais v. U.S*, 718 F. Supp 41, 47 (CIT 1989).

[3]As the above definition notes, ''wi1ful'' behavior encompasses conduct that is grossly negligent as well as conduct that is intentional. Thus, even if Termilind did not act with intent to deceive the Agency, but was merely grossly neglectful of its statutory duties, the outcome would be the same.

[4]Petitioner claims pursuant to section 558(c) of the Administrative Procedure Act that in light of Termilind's willful misrepresentation, the Agency can revoke the registrations summarily without providing notice or opportunity for comment. As this decision documents, the Agency has given Termilind an opportunity to respond to Petitioner's allegations and to submit supplemental briefing. Thus, the Agency has given Termilind more process than section 558(c) requires.

Termilind claims that revocation is the equivalent of cancellation and can only be accomplished through section 6 of FIFRA. In essence, Termilind asserts that a registrant that has submitted false or misleading application materials, and thereby induced the Agency to grant a registration erroneously, has the same interest in the wrongly obtained registration, and is entitled to the same procedural protections, as a registrant that acted in good faith to meet the requirements for registration. We find it implausible that Congress intended applicants who obtained registrations through fraud to receive the procedural protections of section 6.

Likewise, we find Termilind's argument that the Agency does not have the authority to revoke registrations obtained through fraud or misrepresentation, because FIFRA does not specifically describe such a procedure, equally unpersuasive. As the legal analysis above establishes, Agencies have inherent authority to redress fraud or misrepresentation. See also *Chevron U.S.A. v. Natural Resources Defense Council,* 467 U.S. 837, 843. 844 (1984) (''Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.''). Moreover, this conclusion is consistent with the Agency's statutory duty under FIFRA to protect man and the environment from the unreasonable adverse effects of pesticide use. As noted above, Congress established a scheme in FIFRA that requires registrants to supply the data necessary to establish and maintain FIFRA registrations. The Agency, therefore, must be able to rely on applicants to act with goodwill and integrity in submitting the required data. In order to protect the integrity of the FIFRA process and the safety of pesticide users and the public, the Agency must have a swift and sure method of responding when the submission of fraudulent or misleading application materials is discovered. If unscrupulous applicants receive the same procedural protections as honest ones, there is little incentive to be honest. Instead, the dishonest applicants who obtain speedy registration through fraud or misrepresentation are rewarded for their deception. Such an interpretation of FIFRA is contrary to the EPA's mandate to protect public health and the environment.

We wish to emphasize that the quality of the evidence available to the Agency in this case was critical to the outcome. Sworn statements of the parties were included in the record, and based on these, the Agency was able to make the factual findings necessary to underpin a revocation action with confidence. The Agency is very unlikely to take similar actions in future cases unless allegations of misrepresentation are supported by reliable and persuasive evidence.

III.

As noted above, Amvac's petition to revoke Termilind's technical registration is denied on the basis that, beyond its role in resolving data compensation disputes, the Agency has neither the expertise nor the jurisdictional competence to adjudicate complicated issues regarding ownership of intellectual property rights. Nevertheless, the Agency does intend to go forward with a Notice of Intent to Cancel Termilind's technical registration, but on alternative grounds.

Although there is no explicit fitness criterion among the requirements for obtaining or holding a registration under FIFRA, as a general matter, determining the ''fitness'' of an applicant to hold a license or registration is recognized as a legitimate end of licensing schemes. See *Payne v. Fontenot,* 925 F. Supp. 414, 423 (M. D. La. 1995) (licensing body may require certain standards of applicant; qualifications to hold license must have rational connection to applicant's fitness). Furthermore, prior to granting a registration, the Agency is required to determine that a pesticide will not ''generally cause unreasonable adverse effects on the environment'' when used in accordance with widespread and commonly recognized practice. 7 U.S.C. 136a(c)(5). As a practical matter, in making such a determination the Agency must rely on data and certified statements submitted by the registrant. The Agency's ability to make an accurate finding is therefore directly related to the reliability of the material submitted. If the Agency knows that a registrant has a history of willful misrepresentation, the reliability of the materials submitted by that applicant is subject to question. The Agency's ability to make an accurate finding that the statutory standard for registration has been met is undermined under such circumstances. A ''fitness'' or ''reliability'' criterion can therefore properly be implied as a component of the ''unreasonable adverse effects'' standard. Cf. *Cooley v. Fed. Energy Regulatory Comm'n,* 843 F.2d 1464, 1471 (D.C. Cir. 1988) (''Nothing in [Federal Power Act] explicitly requires a finding of fitness.'' Commission is charged with considering all relevant public interest factors; fitness of licensee-applicant is public interest factor); see also *Delaware River Development Corp.,* 10 F.P.C. 540, 550 (1951) (''ethical and moral fitness'' considered in public interest determination to grant permit); see generally *Chevron U.S.A. v. Natural Resources Defense Council,* 467 U.S. 837, 843. 844 (1984) (''Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.'').

Denial of a license on fitness grounds is not uncommon. See, e.g. *RKO General, Inc., v. Fed. Communication Comm'n,* 670 F.2d 215, 232 (D.C. Cir. 1981) (F.C.C. did not abuse its discretion in denying license renewal for lack of candor; ''[T]he Commission must rely heavily on the completeness and accuracy of the submissions made to it, and its applicants, in turn have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate.''); see also *ALRA Laboratories, Inc., v. Drug Enforcement Agency,* 54 F.3d 450, 452 (7th. Cir 1995) (DEA did not abuse its discretion when it denied application for new license to manufacturer and distributor of controlled substances where manufacturer had not complied with recordkeeping requirements, had shipped contaminated products, had his inventory seized and was closed for 6 months, and was under indictment); *Dep't Transp. Fed. Highway Admin. v. Interstate Commerce Comm'n,* 733 F.2d 105, 113 (D.C. Cir. 1984) (I.C.C.'s order granting certificate vacated where evidence inadequate to establish applicant's fitness). The licensing body is in the best position to make determinations regarding applicant fitness, and its decisions are entitled to deference. *Ramanchar v. Sobol,* 838 F. Supp. 100, 108 (S.D.N.Y. 1993) (licensing authority entitled to deference in assessing risks posed by licensee). Furthermore, when making licensing decisions ''an Agency rationally may conclude that past performance is the best predictor of future performance.'' *ALRA,* 54 F.3d at 452; *Matsun Gyogyo Co.,* 2 O.R.W. 349 (NOAA 1980) (past violations should be significant factor in determining whether to issue new permit); see also *Dep't Transp. Fed. Highway Admin.,* 733 F.2d at 112 (statements of good intentions in future of limited value in assessing what applicant's future conduct will be).

FIFRA itself does not limit the criteria that the Agency may consider in making a safety calculus. Instead, as described above, the statute dictates that the Agency must affirmatively find that a product will not cause unreasonable adverse effects before a registration may be granted. Common sense dictates that the Agency must be permitted to consider all relevant criteria when performing its analysis. As the discussion above illustrates, the integrity or reliability of a registrant is highly germane to the Agency's ability to make an accurate finding; if the Agency has reason to suspect that materials submitted by a registrant are untrustworthy, an affirmative safety finding cannot be made.

In this case the Agency has determined that Termilind has submitted misleading materials in support of its applications for registration. The Agency is therefore unable to rely on the veracity of unsubstantiated materials submitted by Termilind. Under these circumstances the Agency cannot affirmatively find that Termilind's technical product will not generally cause unreasonable adverse effects on the environment. Accordingly, it is the Agency's intention to undertake a section 6 cancellation of Termilind's technical NAA product in separate proceedings.

Order

For the reasons discussed above, EPA hereby revokes Termilind's registrations for Alphaspra 200 (EPA Registration No. 67233-2) and Alphaspra 800 (EPA Registration No. 67223-1). Existing stocks of these products must be used in a manner consistent with label directions.

Dated: August 6, 1997

/s/ Lynn R. Goldman

Assistant Administrator for Prevention, Pesticides and Toxic Substances

II. Existing Stocks Determination

On August 6, 1997, in response to a petition filed by Amvac Chemical

Corporation (''Amvac''), EPA revoked the registrations issued to Termilind Limited (''Termilind'') for Alphaspra 200 (EPA Registration No. 67223–2) and Alphaspra 800 (EPA Registration No. 67223–1) after determining that Termilind had intentionally or willfully misidentified in its application materials the source material from which it intended to formulate the two products. In the Order attached to the Revocation Determination, the Agency allowed use of existing stocks of the revoked registrations, provided that such use is consistent with existing label directions. The Order was silent on the question of whether existing stocks could be sold or distributed.

EPA subsequently issued three clarifications addressing the existing stocks issue. On August 18, 1997, the Acting Associate General Counsel for Pesticides and Toxic Substances (Kevin Lee) explained in a letter to counsel for Amvac that inasmuch as the Order resulted in the termination of the registration of the products and did not authorize any sale or distribution of the products, such further sale or use was unlawful under section 3(a) of FIFRA (which generally prohibits the sale and distribution of unregistered pesticides). On August 20, 1997, the Agency issued a clarification to the Order which specifically provided that ''no person may sell or distribute stocks of Alphaspra 200 and Alphaspra 800.'' This clarification was followed by a second clarification issued on August 22, 1997, which stated that the revocations ''shall be effective for dealers and distributors upon publication in the **Federal Register**.'' Under the terms of this last clarification, the Agency would not consider sale or distribution of existing stocks by dealers and distributors to be unlawful until the Revocation Determination was published in the **Federal Register**.

On August 18, 1997, Termilind filed a request for Reconsideration and Stay of the Revocation Order. As part of that request, Termilind asserted that EPA should permit sale and distribution of existing stocks of the revoked products in a manner consistent with EPA's Statement of Policy related to existing stocks issued in the **Federal Register** of June 26, 1991 (56 FR 29362). Amvac filed a brief response to Termilind's request on August 26, 1997, arguing, without responding to any of the specific assertions made by Termilind, that reconsideration would not be appropriate.

On August 29, 1997, EPA indicated in a letter to counsel for Amvac and Termilind that the Agency intended to carefully consider and resolve finally the existing stocks issues raised by the Revocation Order. This Determination reflects the Agency's resolution of these existing stocks issues.

A. Legal Authority

Under section 6(a)(1) of FIFRA, the Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration is suspended or canceled under section 3, 4, or 6 of FIFRA, to such extent, under such conditions, and for such uses as the Administrator determines is not inconsistent with the purposes of FIFRA. As noted above, EPA issued a Policy Statement in 1991 outlining the policies that would generally be followed in making such existing stocks determinations. The legal issue presented is whether section 6(a)(1) and the Policy Statement apply to the situation addressed in the Revocation Determination.

The Agency concluded in its Revocation Determination that it has the inherent authority to correct an erroneous registration decision induced by fraud or willful misrepresentation, and that such authority is inherent in the authority to issue registrations in the first place. The Agency's authority to issue pesticide registrations stems from section 3 of FIFRA. It thus seems to follow that the inherent authority to revoke a registration induced by fraud or misconduct also stems from section 3 of FIFRA. The question then becomes: Is the revocation a ''cancellation under section 3'' for purposes of section 6(a)(1) of FIFRA?

The Agency has concluded that there is no meaningful distinction between a revocation and a cancellation, and that the revocation of Termilind's registration was a cancellation under section 3 giving the Agency authority over the sale and use of existing stocks. Whether the action is called a revocation or cancellation, the defining element of the action is the termination of a license (or in this case, pesticide registration) previously issued by the Agency. Cancellation is the term used in FIFRA for the termination of a registration; the word ''revocation'' does not appear in the statute in this context.

Moreover, in this particular case, the license issued by the Agency does not just confer something of value to the licensee (registrant); a pesticide registration allows a pesticide product to enter the stream of commerce where the interests of third parties come into play. When a pesticide registration terminates, for whatever reason, the termination can have immediate consequences for all these third parties. Unless the Agency has determined otherwise under section 6(a)(1) or has issued a regulation under section 3(a) of FIFRA, existing stocks of an unregistered pesticide may be used by any person with impunity, without regard to any conditions that would have applied to the use while the product was still registered.[5] Sale and distribution of an unregistered pesticide, on the other hand, is unlawful under FIFRA unless the Agency allows such sale or distribution pursuant to section 6(a)(1). Such a prohibition on sale or distribution would also apply to commercial ''for-hire'' applications of the unregistered product.[6] A determination that a revocation is not a cancellation under section 3 would leave the Agency essentially powerless to effectively condition the use of existing stocks (even if such conditions were necessary to prevent unreasonable adverse effects on the environment), and would also leave the Agency powerless to authorize the sale of existing stocks, even by third parties who had no involvement in the activities giving rise to the revocation and even where there are no health, safety, or environmental reasons to disallow continued sales and where a revocation may trigger the otherwise unnecessary disposal of existing stocks of the revoked product. The Agency is declining to interpret FIFRA in a manner that would suggest that Congress intended to give the Agency the authority to terminate registrations without giving the Agency authority to deal with the existing stocks consequences of such terminations. The Agency concludes that a revocation of a registration based upon misconduct in the inception of the registration is a cancellation under FIFRA section 3, and provides the Agency authority under section 6(a)(1) to regulate the sale, distribution, and use of existing stocks of a revoked product.

B. Provisions for Existing Stocks

For the reasons stated above, the Agency concludes that it has the authority under FIFRA section 6(a)(1) to issue an order regulating the sale, distribution, and use of existing stocks of revoked products. Under that section, such sale or use may be permitted to the extent, and under such conditions, as

[5] Such use need not be consistent with the terms of the previously-approved labeling of the product. Section 12(a)(2)(G) makes it a violation of FIFRA to use any registered pesticide in a manner inconsistent with its labeling; there is no similar provision making it unlawful to use an unregistered pesticide in a manner inconsistent with its labeling.

[6] FIFRA section 2(gg) exempts from the definition of sale or distribution only the commercial application of registered pesticides.

will make the sale and use consistent with the purposes of FIFRA.

The Agency set forth in its Policy Statement on existing stocks the general policies it will apply when making decisions under section 6(a)(1). In particular, the Agency concluded that it will focus on two issues in making existing stocks determinations: whether the sale or use of existing stocks may pose unreasonable adverse effects on the environment, and whether the registrant (or conceivably some other party) has failed to comply with an obligation of registration. As a general matter, the Agency concluded in the Policy Statement that existing stocks determinations where the Agency has significant risk concerns will be made on a case-by-case basis, with sale and use generally allowed only if supported by a risk/benefit balancing. In situations where there are no significant risk concerns, the Policy would generally allow non-registrants to sell, distribute, and use existing stocks until such stocks are exhausted (provided that all existing label directions are met). The sale and distribution of existing stocks by registrants under the Policy generally hinges upon whether (and when) the registrant failed to comply with an obligation of registration. The Policy is silent on whether supplemental distributors (under 40 CFR 152.132) should be treated like registrants or like other distributors of pesticide products.[7]

The first issue of concern under the Policy Statement is whether the Agency has risk concerns with the existing stocks of the revoked products. This is an issue that has been discussed by both parties in various papers related to Amvac's Petition. The Agency expressed a concern in its Revocation Order related to Termilind's technical registration that the Agency has difficulty finding that a product will not result in unreasonable adverse effects on the environment if a registrant makes false statements to the Agency. In such circumstances, the Agency cannot rely on scientific data submitted by a registrant or on the registrant's compliance with its obligations under section 6(a)(2) to submit additional adverse effects information to the Agency. Where the Agency is unable to rely on material submitted by a registrant, the Agency cannot make the affirmative findings necessary to a determination that a product will not cause unreasonable adverse effects on the environment.

This particular concern with Termilind's registrations does not apply with much, if any, force to the existing stocks issue presented here. While the source used by Termilind to manufacture its end-use products was not the source originally identified by Termilind in its applications, the identity of the source is not in dispute. The papers filed with the Agency by both sides provide the Agency with ample confidence that the existing stocks were manufactured with NAA source material supplied by Inchema. The question then becomes whether the Agency has confidence that the material supplied by Inchema was NAA of sufficient quality to allow the Agency to conclude that the existing stocks of revoked material can be used without causing unreasonable adverse effects on the environment.

The Agency has concluded, based on a number of factors, that there is reasonable assurance that the Inchema material is of sufficient quality to resolve any possible concerns associated with the sale, distribution, or use of existing stocks. Sampling performed of Termilind material did not reveal any problems with the product. While Amvac declined to accept the Inchema NAA provided to Termilind, the Agency is unaware of any allegations by Amvac that Inchema NAA lacks sufficient quality to support a registration.[8] There has been no material presented by Amvac to challenge Termilind's assertion that Amvac's refusal to accept the Inchema NAA was based upon anything other than a dispute over price. The Agency previously accepted the quality of Inchema NAA as a source for Termilind's products when it approved amendments to Termilind's registrations to correctly reflect the source of NAA used in those products. Based on all these factors, the Agency has no reason to suspect that the NAA products made by Termilind differ meaningfully in quality from other NAA products on the market, and does not believe that sale or use of existing stocks of such products would result in unreasonable adverse effects on the environment.[9]

The only reason to disapprove the sale, distribution, or use of existing stock is to punish the misconduct that resulted in the registration of the products in the first place, and to deter future such misconduct. As noted earlier, this particular situation was not addressed in the Policy Statement, and the Agency has concluded that the Policy Statement does not provide significant guidance on how to deal with misconduct similar to Termilind's. It is clear that prohibiting sale, distribution, and/or use of existing stocks may result in hardships on relatively ''innocent'' third parties. On the other hand, allowing continued sale, distribution, or use of existing stocks would be ''unfair'' to registrants of competing registered products (such as Amvac in this case) that presumably are complying with the provisions of FIFRA, and would tend to minimize the repercussions to Termilind in this case and serve as less of a disincentive for others to include incorrect or false information in their applications for registration.

After considering carefully these issues, the Agency has determined that it is appropriate to prohibit all further sale or distribution by any person of the revoked products, except the application of existing stocks by for-hire applicators so long as the applicator does not deliver any unapplied pesticide to the person for whom the application is performed. The Agency reached this determination based primarily on the nature of the misconduct in this particular case and its conclusion that the use by pesticide registrants of source material different than the source material identified in the statement of formula submitted to the Agency is a very serious matter. In general, where the Agency revokes a registration because of misconduct involved in its inception, the Agency believes it inappropriate to allow the company involved in the misconduct to derive any benefit from its actions. The only way for the Agency to maximize the likelihood that Termilind will not profit at all from its actions is to prohibit all sale and distribution of the revoked products. In addition, the Agency believes it appropriate to send the strongest possible message to any company that may be considering the use of unregistered source material in its production of registered product notwithstanding the fact that the

[7] It should also be noted that the Policy Statement does not address the issue of what existing stocks provisions are appropriate for situations such as the one involving Termilind, where the Agency concludes that a registration would not have been issued in the first place in the absence of misconduct by the applicant for registration.

[8] Indeed, Amvac's allegations that Inchema has misappropriated Amvac proprietary technology, as well as Amvac's previous use of Inchema as a source of its own NAA and the absence of any submittals by Amvac under section 6(a)(2) of FIFRA discussing quality problems associated with Inchema's production of NAA, seem to suggest that Amvac has no dispute with the quality of material produced by Inchema.

[9] Indeed, the only difference between a risk/benefit balancing for NAA generally and a balancing for the existing stocks is that a ban on existing stocks would require that the stocks be disposed of. Legal or illegal disposal of existing stocks could have financial and/or environmental consequences that tip the risk/benefit balance even further towards allowance of the use of existing stocks.

registration is predicated on use of a registered source material. Put simply, the Agency generally does not intend to allow resale by any person of pesticide products that were not produced in compliance with FIFRA.

The Agency does intend to allow continued use of the revoked products, including use by for-hire applicators, provided that such use is consistent with the labeling of the products. The Agency does not believe that a prohibition on further use would be realistically enforceable in the absence of the devotion of significant resources to such enforcement, and given the conclusion reached on the likelihood of no unreasonable adverse effects on the environment, the Agency does not believe this issue merits the expenditure of such significant resources. The Agency is also concerned that a prohibition on use could lead to unnecessary and unsupervised disposal of revoked products by users.

The Agency recognizes that in data suspension cases under section 3(c)(2)(B) of FIFRA, adversely affected persons have a right to a hearing on existing stocks issue. While no such right is provided for revocations such as the one involved here, the Agency believes it appropriate in this particular case, given the novelty of the issues and the absence of any guidance for revocations in the existing stocks Policy Statement, to provide any person adversely affected by this existing stocks determination with an informal hearing opportunity before the Agency if such person wishes to seek reconsideration of this determination. If this opportunity for an informal hearing is pursued, the Agency will consider all issues raised relevant to the existing stocks determination. Any person interested in requesting an informal hearing should submit such a request within 60 days, in writing, to Robert Perlis, Office of General Counsel (2333), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Requests should include the nature of the person's objection to the determination, the nature of the proposed changes to the determination, and the bases for the objections and changes.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 31, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

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