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Presidential Documents

Title 3—

The President

Executive Order 13093 of July 27, 1998

American Heritage Rivers, Amending Executive Order 13061 and 13080

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to increase the number of rivers that the President may designate as American Heritage Rivers, it is hereby ordered that the second sentence of both section 2(d)(1) of Executive Order 13061 and of section 2(a) of Executive Order 13080 are amended by deleting ''ten'' and inserting ''up to 20'' in lieu thereof.

William J. Clinton

THE WHITE HOUSE,
July 27, 1998.

[FR Doc. 98–20450
Filed 7–28–98; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register

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Wednesday, July 29, 1998

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–72–AD; Amendment 39–10677; AD 98–16–03]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Models TB9 and TB10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain SOCATA—Groupe AEROSPATIALE (Socata) Models TB9 and TB10 airplanes. This AD requires repetitively inspecting the wing front attachments on the wing and fuselage sides for cracks, and repetitively incorporating a certain modification kit (type of kit and time of incorporation depends on whether cracks are found during the inspection). This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to prevent structural failure of the wing front attachments caused by fatigue cracking, which could result in the wing separating from the airplane if the airplane is operated with cracked wing front attachments over an extended period of time.

DATES: Effective September 21, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 21, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from the SOCATA—Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone: 33–5–62–41–76–52; facsimile: 33–5–62–41–76–54; or the Product Support Manager, SOCATA Aircraft, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1160; facsimile: (954) 964–4141. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–72–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Socata Models TB9 and TB10 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 22, 1998 (63 FR 28299). The NPRM proposed to require repetitively inspecting the wing front attachments on the wing and fuselage sides for cracks, and repetitively incorporating a certain modification kit (type of kit and time of incorporation depends on whether cracks are found during the inspection). Accomplishment of the proposed action as specified in the NPRM would be in accordance with Socata Service Bulletin No. SB 10–081–57, Amendment 1, dated August 1996. Accomplishment of the proposed modifications, as applicable, would be required in accordance with the Technical Instructions for Modification included with each kit.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France.

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

Comment Disposition

Socata states that reference to one of the service documents was incorrectly referenced in the NPRM. In particular, Socata Technical Instruction of Modification OPT 109081–53 was referenced as Socata Technical Instruction of Modification OPT 109181–53 in both paragraphs (e)(1) and (e)(2) of the AD.

The FAA concurs that this service document was incorrectly referenced. This was inadvertent on the FAA's part. The final rule will include the correct reference to this document.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 113 airplanes in the U.S. registry will be affected by this AD. The initial inspection will take approximately 3 workhours per airplane to accomplish, at an average labor rate of approximately $60 an hour. Based on these figures, the total cost impact of this inspection on U.S. operators is estimated to be $20,340, or $180 per airplane.

The initial modifications will take approximately 32 workhours to accomplish, at an average labor rate of $60 per hour. Parts cost approximately $1,125 per airplane. Based on these figures, the total cost impact of the initial modifications on U.S. operators is estimated to be $344,085, or $3,045 per airplane.

These figures only take into account the costs of the initial inspection and initial modifications. The FAA has no way of determining the number of repetitive inspections and modifications each owner/operator of the affected airplanes will incur.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–16–03 Socata—Groupe Aerospatiale: Amendment 39–10677; Docket No. 95–CE–72–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Model TB9, serial numbers 1 through 9999; and

Model TB10, serial numbers 1 through 803, 805, 806, 809 through 815, 820, 821, and 822.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) 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 in the body of this AD, unless already accomplished.

To prevent structural failure of the wing front attachments caused by fatigue cracking, which could result in the wing separating from the airplane if the airplane is operated with cracked wing front attachments over an extended period of time, accomplish the following:

Note 2: The compliance times of this AD are presented in landings instead of hours time-in-service (TIS). If the number of landings is unknown, hours TIS may be used by multiplying the number of hours TIS by 1.5.

(a) For all affected airplanes, upon accumulating 3,000 landings on the wing front attachments or within the next 100 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,000 landings, inspect the wing front attachments (both the wing sides and fuselage sides) in accordance with Socata Service Bulletin No. SB 10–081–57, Amendment 1, dated August 1996.

(b) For all affected airplanes, accomplish the following on the wing front attachments on the wing sides:

(1) If no cracks are found on the wing front attachments on the wing sides during any inspection required by paragraph (a) of this AD, upon accumulating 12,000 landings on these wing front attachments or within the next 100 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 6,000 landings provided no cracks are found during any inspection required by paragraph (a) of this AD, incorporate Modification Kit OPT10 911000 in accordance with Socata Technical Instruction No. 9110, which incorporates the following pages:

Pages	Revision level	Date
0 and 1	Amendment 1	January 31, 1992.
2 through 11	Original Issue	October 1985.

(2) If a crack(s) is found on the wing front attachments on the wing sides during any inspection required by paragraph (a) of this AD, prior to further flight, incorporate Modification Kit OPT10 911000 in accordance with Socata Technical Instruction No. 9110. Incorporate this kit at intervals not to exceed 6,000 landings thereafter provided no cracks are found during any inspection required by paragraph (a) of this AD.

(c) For Models TB9 and TB10 airplanes, with a serial number in the range of 1 through 399, or with a serial number of 413; that do not have either Socata Service Letter (SL) 10–14 incorporated or Socata Modification Kit OPT10 908100 incorporated, accomplish the following on the wing front attachments on the fuselage sides:

(1) If no cracks are found on the wing front attachments on the fuselage sides during any inspection required by paragraph (a) of this AD, upon accumulating 6,000 landings on these wing front attachments or within the next 100 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 12,000 landings provided no cracks are found during any inspection required by paragraph (a) of this AD, incorporate Modification Kit OPT10 919800 in accordance with Socata Technical Instruction of Modification OPT10 9198–53, dated October 1994.

(2) If a crack(s) is found on the wing front attachments on the fuselage sides during any inspection required by paragraph (a) of this AD, prior to further flight, incorporate Modification Kit OPT10 919800 in accordance with Socata Technical Instruction of Modification OPT10 9198–53, dated October 1994. Incorporate this kit at intervals not to exceed 12,000 landings thereafter provided no cracks are found during any inspection required by paragraph (a) of this AD.

(d) For Models TB9 and TB10 airplanes, with a serial number in the range of 1 through 399, or with a serial number of 413; that have either Socata Service Letter (SL) 10–14 incorporated or Socata Modification Kit OPT10 908100 incorporated, accomplish the following on the wing front attachments on the fuselage sides:

(1) If no cracks are found on the wing front attachments on the fuselage sides during any inspection required by paragraph (a) of this AD, upon accumulating 12,000 landings on these wing front attachments or within the next 100 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 12,000 landings provided no cracks are found during any inspection required by paragraph (a) of this AD, incorporate Modification Kit OPT10 919800 in accordance with Socata Technical Instruction of Modification OPT10 9198–53, dated October 1994.

(2) If a crack(s) is found on the wing front attachments on the fuselage sides during any inspection required by paragraph (a) of this AD, prior to further flight, incorporate Modification Kit OPT10 919800 in accordance with Socata Technical Instruction of Modification OPT10 9198–53, dated October 1994. Incorporate this kit at intervals not to exceed 12,000 landings thereafter provided no cracks are found during any

inspection required by paragraph (a) of this AD.

(e) For Models TB9 and TB10 airplanes, with a serial number in the range of 400 through 412, or with a serial number in the range of 414 through 9999; accomplish the following on the wing front attachments on the fuselage sides:

(1) If no cracks are found on the wing front attachments on the fuselage sides during any inspection required by paragraph (a) of this AD, upon accumulating 12,000 landings on these wing front attachments or within the next 100 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 12,000 landings provided no cracks are found during any inspection required by paragraph (a) of this AD, incorporate Modification Kit OPT10 908100 in accordance with Socata Technical Instruction of Modification OPT10 9081–53, Amendment 2, dated October 1994.

(2) If a crack(s) is found on the wing front attachments on the fuselage sides during any inspection required by paragraph (a) of this AD, prior to further flight, incorporate Modification Kit OPT10 908100 in accordance with Socata Technical Instruction of Modification OPT10 9081–53, Amendment 2, dated October 1994. Incorporate this kit at intervals not to exceed 12,000 landings thereafter provided no cracks are found during any inspection required by paragraph (a) of this AD.

Note 3: ''Unless already accomplished'' credit may be used if the kits that are required by paragraphs (c)(1), (d)(1), and (e)(1) of this AD are already incorporated on the applicable airplanes. As specified in the AD, repetitive incorporation of these kits would still be required at intervals not to exceed 12,000 landings provided no cracks are found.

(f) 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.

(g) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(h) Questions or technical information related to the service information referenced in this AD should be directed to the SOCATA—Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone: 33–5–62–41–76–52; facsimile: 33–5–62–41–76–54; or the Product Support Manager, SOCATA Aircraft, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–1402. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(i) The inspections required by this AD shall be done in accordance with Socata Service Bulletin No. SB 10–081–57, Amendment 1, dated August 1996. The modifications required by this AD shall be done in accordance with Socata Technical Instruction of Modification OPT10 9198–53, dated October 1994; Socata Technical Instruction of Modification OPT10 9081–53, Amendment 2, dated October 1994; and Socata Technical Instruction No. 9110, which incorporates the following pages:

Pages	Revision level	Date
0 and 1	Amendment 1	January 31, 1992.
2 through 11	Original Issue	October 1985.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SOCATA—Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France or the Product Support Manager, SOCATA Aircraft, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French AD 94–264(A), dated December 7, 1994.

(j) This amendment becomes effective on September 21, 1998.

Issued in Kansas City, Missouri, on July 21, 1998.

Brian A. Hancock,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–20080 Filed 7–28–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–14–AD; Amendment 39–10679; AD 98–16–04]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 180, 182, and 185 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Cessna Aircraft Company (Cessna) 180, 182, and 185 series airplanes that have wing extension supplemental type certificate (STC) SA00276NY or supplemental type approval (STA) SA93–136 incorporated. This AD requires inspecting between wing station (W.S.) 90 and W.S. 110 for an angle stiffener at the lower wing spar splice. If the angle stiffener is not installed, this AD requires installing a reinforcing strap. This AD is the result of failed test results revealing that the wings of these Cessna airplanes, without the stiffener, do not meet the applicable design requirements after being modified by the above STC. The actions specified by this AD are intended to prevent wing failure during flight caused by the absence of an angle stiffener, which could cause loss of control of the airplane.

DATES: Effective September 21, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 21, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Air Research Technology, Inc., 3440 McCarthy, Montreal, Quebec, Canada H4K 2P5; telephone: (514) 337–7588; facsimile: (514) 337–3293. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–14–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Maroof, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York, 11581–1200; telephone: (516) 256–7522; facsimile: (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Cessna 180, 182, and 185 series airplanes equipped with wing extension STC SA00276NY or STA SA93–136 was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 19, 1998 (63 FR 13374). The NPRM proposed to require inspecting the inside of the underside of the wing, near Wing Station (W.S.) 100, for an angle stiffener. If an angle stiffener is not installed, the proposed AD would require installing a reinforcement strap along the lower wing spar. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Air Research Technology Service Bulletin No. SB–1–96, Issue 1, dated April 11, 1996.

The NPRM was the result of failed test results revealing that the wings of these Cessna airplanes, without the stiffener, do not meet the applicable design requirements after being modified by the above STC or STA.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that there are 55 airplanes in the U.S. registry that will be affected by this AD, that it will take approximately 1 workhour for the initial inspection and 7 workhours for the installation of the reinforcement strap per airplane, and that the average labor rate is approximately $60 an hour. Parts are supplied by the wing extension kit manufacturer at no cost to the owner/operator. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $26,400, or $480 per airplane. The FAA has no way to determine the number of owners/operators who may have already accomplished this action, and will presume that none of the owners/operators of the affected airplanes have accomplished this action.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–16–04 Cessna Aircraft Company: Amendment 39–10679; Docket No. 97–CE–14–AD.

Applicability: The following airplane models, all serial numbers, certificated in any category, that have wing extension supplemental type certificate (STC) SA00276NY or supplemental type approval (STA) SA93–136 incorporated.

Note 1: The STA is the Canadian version of the U.S. STC.

Models: 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, 182S, R182, T182, TR182, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent wing failure during flight caused by the absence of an angle stiffener, which could cause loss of control of the airplane, accomplish the following:

(a) Inspect inside the left and right wings, aft of the spar, closest to where the strut connects to the wing, for an angle stiffener along the lower spar cap between Wing Station (W.S.) 90 and W.S. 110 in accordance with Part A of the Accomplishment Instructions of Air Research Technology, Inc. (ART) Service Bulletin (SB) No. SB–1–96, Issue 1, dated April 11, 1996.

(b) If an angle stiffener is not installed, prior to further flight, install a stainless steel reinforcement strap on the underside of each wing, along the spar at W.S. 100.50 in accordance with Part B of the Accomplishment Instructions of ART SB No. SB–1–96, Issue 1, dated April 11, 1996.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York, 11581–1200. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(e) The inspection and installation required by this AD shall be done in accordance with Air Research Technology Service Bulletin No. SB–1–96, Issue 1, dated April 11, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Air Research Technology, Inc., 3440 McCarthy, Montreal, Quebec, Canada H4K. Copies may be inspected at the FAA, Central Region, ffice of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on September 21, 1998.

Issued in Kansas City, Missouri, on July 23, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–20225 Filed 7–28–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–6]

Amendment to Class D and Class E Airspace; St. Joseph, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; withdrawal.

SUMMARY: This action withdraws the Direct final rule, request for comments mending the Class D and Class E airspace designations at St. Joseph, MO. The Direct final rule, request for comments is being withdrawn due to an error in the original Docket 98–ACE–6 (63 FR 20528), published April 27, 1998 and a delay in publication of the correction. Therefore, a determination has been made to withdraw the Direct final rule, request for comments and resubmit it at a later date.

EFFECTIVE DATE: This withdrawal is effective July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule

On April 27, 1998, a Direct final rule, request for comments was published in the **Federal Register** to amend the Class D and Class E airspace designations at St. Joseph, MO. The Class E airspace, 700 feet and above was enlarged to comply with the criteria specified in FAA Order 7400.2D. The Class D and Class E surface area designations were revised to reflect a change to the Airport Reference Point. The FAA has encountered a delay in publication of an extension of comment period and a correction to Docket 98–ACE–6; therefore, it is necessary to withdraw the Direct final rule, request for comments.

Conclusion

In consideration of the aforementioned publication delay, action is being taken to withdraw the Direct final rule, request for comments until an appropriate comment period is provided.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of the Direct final rule, request for comments

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 98–ACE–6, as published in the **Federal Register** on April 27, 1998 (63 FR 20528), is hereby withdrawn.

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

Issued in Kansas City, MO, on July 10, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–20116 Filed 7–28–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 744

[Docket No. 970428099–8185–06]

RIN 0694–AB60

Additions to Entity List: Russian Entities

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations (EAR) provide that the Bureau of Export Administration (BXA) may inform exporters, individually or through amendment to the EAR, that a license is required for exports or reexports to certain entities. The EAR contains a list of such entities. This rule adds to the entity list certain Russian entities under investigation by the Russian government for suspected export control violations involving weapons of mass destruction and missile technology. Exports or reexports of all items subject to the EAR to these newly added entities now require a license, and applications will be reviewed with a presumption of denial.

EFFECTIVE DATE: This rule is effective July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Eileen M. Albanese, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–0436.

SUPPLEMENTARY INFORMATION:

Background

General Prohibition Five (§ 736.2(b)(5) of the EAR) prohibits exports and reexports to certain end-users or end-uses (described in part 744 of the EAR) without a license. In the form of Supplement No. 4 to part 744, BXA maintains an ''Entity List'' to provide notice informing the public of certain entities subject to such licensing requirements. This rule adds certain entities in Russia to this list. This rule further adds a new § 744.10 describing license requirements and review standards for exports and reexports to such entities.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, continued by Presidential notices of August 15, 1995, August 14, 1996, and August 15, 1997.

Rulemaking Requirements

1. This final rule has been determined to be not significant for the purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This rule involves a collection of information requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, PO Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–744) is amended, as follows:

PART 744—[AMENDED]

1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*, 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527); and August 13, 1997 (62 FR 43629, August 15, 1997).

2. Part 744 is amended by adding a new § 744.10 to read as follows:

§ 744.10 Restrictions on certain entities in Russia.

(a) *General prohibition.* Certain entities in Russia, under investigation by the Russian government for suspected export control violations involving weapons of mass destruction and missile technology, are included in Supplement No. 4 of this part 744 (Entity List). (See also § 744.1(c) of the EAR.) Exporters are hereby informed that these entities are ineligible to receive any items subject to he EAR without a license.

(b) *Exceptions.* No License Exceptions apply to the prohibition described in paragraph (a) of this section.

(c) *License review standards.* Applications to export or reexport items subject to the EAR to these entities will be reviewed with a presumption of denial.

3. Supplement No. 4 to part 744 is amended by adding, in alphabetical order, the following entities:

Supplement No. 4 to part 744—Entity List

* * * * *

Baltic State Technical University, 1/21, 1-ya Krasnoarmeiskaya UI., 198005 St. Petersburg, Russia, for all items subject to the EAR (see § 744.10 of the EAR)

* * * * *

Europalace 2000, Moscow, Russia, for all items subject to the EAR (see § 744.10 of the EAR)

Glavkosmos, 9 Krasnoproletarskaya st., 103030 Moscow, Russia, for all items subject to the EAR (see § 744.10 of the EAR)

Garfit (aka State Scientific Research Institute of Graphite or NIIGRAFIT), 2 Ulitsa Elektrodnaya, 111524 Moscow, Russia, for all items subject to the EAR (see § 744.10 of the EAR)

* * * * *

INOR Scientific Center, Moscow, Russia, for all items subject to the EAR (see § 744.10 of the EAR)

* * * * *

MOSO Company, Moscow, Russia, for all items subject to the EAR (see § 744.10 of the EAR)

* * * * *

Polyus Scientific Production Association, 3 Ulitsa Vvedenskogo, 117342 Moscow, Russia, for all items subject to the EAR (see § 744.10 of the EAR)

* * * * *

Dated: July 23, 1998.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 98–20272 Filed 7–28–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. 96P–0228]

Medical Devices; Reclassification and Codification of Vitamin D Test System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued an order in the form of a letter to INCSTAR Corp. reclassifying INCSTAR 25–Hydroxyvitamin D ^{125}I Radioimmunoassay (RIA). This radioimmunoassay device is intended for use in clinical laboratories for the quantitative determination of 25-hydroxyvitamin D (25–OH–D) and other hydroxylated metabolites of vitamin D in serum or plasma to be used in the assessment of vitamin D sufficiency. The device and substantially equivalent devices of this generic type were reclassified from class III (premarket approval) to class II (special controls). Accordingly, the order is being codified in the Code of Federal Regulations.

EFFECTIVE DATES: The regulation is effective August 28, 1998. The reclassification was effective September 24, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon K. Lappalainen, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel’s recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act as amended by FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of postamendments devices is governed by section 513(f)(3) of the act, formerly section 513(f)(2) of the act. This section provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition the Secretary of the Department of Health and Human Services (the Secretary) for the issuance of an order classifying the device in class I or class II. FDA's regulations in § 860.134 (21 CFR 860.134) set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

FDAMA added paragraph (f)(2) in section 513 of the act that addresses classification of postamendments devices. New paragraph (f)(2) in section 513 of the act provides that upon receipt of a ''not substantially equivalent'' determination, a 510(k) applicant may request FDA to classify a postamendments device into class I or class II. Within 60 days from the date of such a written request, FDA must classify the device by written order. If FDA classifies the device into class I or II, the applicant has then received clearance to market the device and it can be used as a predicate device for other 510(k)'s. It is expected that this will be used for low risk devices. This process does not apply to devices that have been classified by regulation into class III—i.e., preamendments class III devices, or class III devices for which a PMA is appropriate.

Under section 513(f)(3)(B)(i) of the act, formerly section 513(f)(2)(B)(i) of the act, the Secretary may, for good cause shown, refer a petition to a device classification panel. If a petition is referred to a panel, the panel shall make a recommendation to the Secretary respecting approval or denial of the petition. Any such recommendation shall contain: (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the petition was filed.

On July 1, 1996, FDA filed the reclassification petition submitted by INCSTAR Corp., requesting reclassification of the vitamin D test system from class III to class II.

On the basis of FDA's review of the data submitted in the reclassification petition, and after reviewing the panel's recommendations on two previous petitions submitted in 1983 and 1985 regarding the quantitative measurement of vitamin D, FDA issued an order to the petitioner, reclassifying vitamin D test system for use in clinical laboratories for the quantitative determination of 25–OH–D and other hydroxylated metabolites of vitamin D in serum or plasma to be used in the assessment of vitamin D sufficiency, and substantially equivalent devices of this generic type, from class III to class II. Accordingly, as required by § 860.134(b)(7) of the regulations, FDA is announcing the reclassification of the vitamin D test system intended for use in clinical laboratories for the quantitative determination of 25–OH–D and other hydroxylated metabolites of vitamin D in serum or plasma to be used in the assessment of vitamin D sufficiency from class III into class II. In addition, FDA is issuing the notice to codify the reclassification of the device by adding new § 862.1825.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this reclassification 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.

III. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354) (as amended by the subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of this device from class III to class II will relieve all manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or state, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Refund Act of 1995 is not required.

IV. Paperwork Reduction Act of 1995

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

List of Subjects in 21 CFR Part 862

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 862 is amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR part 862 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 862.1825 is added to subpart B to read as follows:

§ 862.1825 Vitamin D test system.

(a) *Identification*. A vitamin D test system is a device intended for use in clinical laboratories for the quantitative determination of 25-hydroxyvitamin D (25–OH–D) and other hydroxylated metabolites of vitamin D in serum or plasma to be used in the assessment of vitamin D sufficiency.

(b) *Classification*. Class II (special controls).

Vitamin D test systems must comply with the following special controls: (1) Labeling in conformance with 21 CFR 809.10 and (2) compliance with existing standards of the National Committee on Clinical Laboratory Standards.

Dated: July 17, 1998.

D.B. Burlington.

Director, Center for Devices and Radiological Health.

[FR Doc. 98–20241 Filed 7–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8776]

RIN 1545–AW34

Conversion to the Euro

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to U.S. taxpayers operating, investing or otherwise conducting business in the currencies of certain European countries that are replacing their national currencies with a single, multinational currency called the euro. These regulations provide rules relating to adjustments required for qualified business units operating in such currencies and rules relating to the tax effect of holding such currencies or financial instruments or contracts denominated in such currencies. The text of these temporary regulations also serves as the text of proposed regulations published elsewhere in this issue of the **Federal Register**.

DATES: These regulations are effective July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Howard Wiener of the Office of Associate Chief Counsel (International), (202) 622–3870, regarding the change in functional currency rules and Thomas Preston of the Office of Assistant Chief Counsel (Financial Institutions and Products), (202) 622–3930, regarding section 1001 (not toll free calls).

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1998, the IRS issued Announcement 98–18 (1998–9 IRB 44) requesting comments relating to the tax issues for U.S. taxpayers operating, investing or otherwise conducting business in a currency that is converting to the euro. Numerous comments were received. After consideration of these comments, these regulations are adopted as a temporary Treasury decision to provide immediate guidance to taxpayers.

Explanation of Provisions

I. Background

The Treaty on European Union signed February 7, 1992, (31 I.L.M. 247) (entered into force November 1, 1993), sets forth a plan to replace the national currencies of participating members (legacy currencies) that meet certain economic criteria with a single European currency (euro). Pursuant to directives of the European Council, the process of converting the legacy currencies into the euro will take place in three phases.

On January 1, 1999, the currency of participating member states of the European Union shall be the euro. At that time, the euro will be substituted for the currency of each state at a conversion rate established pursuant to the Treaty on European Union. Thereafter, the bills and coins of each of the legacy currencies will remain in circulation but will cease to have independent value apart from the euro. On January 1, 2002, euro bills and coins will be introduced into circulation. From January 1, 1999, until June 30, 2002 (transition period), the legacy currencies will remain in circulation as subunits of the euro. The transition period is referred to as the ‘‘no prohibition, no compulsion’’ period because during this time amounts may generally be denominated in the legacy currencies and/or the euro at the option of individuals and businesses. Finally, by July 1, 2002, the legacy currencies will no longer be accepted as legal tender.

On May 3, 1998, the European Union announced the eleven countries that would initially participate in the conversion and the expected rates at which the respective currencies would convert to the euro. The eleven countries are Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Portugal, and Spain. Four current members of the European Union (Denmark, Greece, Sweden, and the United Kingdom) will not participate in the initial conversion to the euro. These countries, along with other countries that later join the European Union, however, may convert their currencies to the euro at some future time.

II. Temporary Regulations

1. In General

These temporary regulations provide guidance regarding certain of the federal income tax consequences arising from the introduction of the euro. Consistent with comments received from taxpayers, the regulations generally minimize the tax consequences that arise by reason of the euro conversion. In a limited number of circumstances, however, the Treasury and IRS determined that considerations, such as administrative feasibility, made a different result more appropriate.

The regulations provide guidance with respect to two issues: (i) the circumstances under which the euro conversion creates a realization event with respect to instruments and contracts denominated in a legacy currency, and (ii) the circumstances under which the euro conversion constitutes a change in functional currency for a qualified business unit (QBU) whose functional currency is a legacy currency, and certain consequences thereof.

2. Realization

The temporary regulations provide that the conversion of legacy currencies to the euro does not result in a realization event under section 1001. This rule is broadly applicable to all situations where the rights and obligations of a taxpayer are altered solely by reason of the euro conversion. Thus, conversion to the euro of legacy currency held by a taxpayer and conversion of legacy currency denominated contractual relationships, financial instruments, and other claims or obligations are not realization events solely as a result of the conversion. In addition, as a result of this rule, exchange gains and losses on section 988 transactions denominated in a legacy currency will not be taken into account until a subsequent realization event with respect to the underlying instrument. For example, when the Dutch guilder is converted into the euro, a U.S. dollar functional currency taxpayer will not recognize either market gain or loss or exchange gain or loss on a fixed interest rate Dutch guilder debt instrument.

Other aspects of the euro conversion may result in taxable events. For example, if an unscheduled fractional principal payment is made on a debt instrument in order to facilitate a rounding convention, this payment is accounted for under the rules governing payments on debt instruments (such as §§ 1.446–2 and 1.1275–2) and under section 988 (in the case of a section 988 transaction). Other changes may or may not constitute realization events depending on the terms of the changes. For example, accrual periods, holiday conventions or indices on a floating rate instrument may be altered. Whether these changes are realization events must be determined under existing law. See, e.g., § 1.1001–3.

Limitations that under otherwise applicable principles prevent or defer the recognition of realized gains and losses continue to apply. Thus, for example, recognition of losses between related parties under section 267 and § 1.988–1(a)(10) remain subject to the limitations set forth in those sections.

3. Change in Functional Currency

The regulations provide that QBUs with a legacy functional currency will be deemed to have automatically changed their functional currency to the euro at the beginning of the year they are required to make such change. Because of the significant administrative burdens that will be imposed on QBUs when they are required to change their internal systems to accommodate the introduction of the euro, the regulations provide that a QBU that currently uses a legacy functional currency is deemed to automatically change its functional currency to the euro in the year the QBU changes its books and records to the euro. That change, however, must be made no later than the last taxable year beginning on or before the first day such legacy currency is no longer valid legal tender.

The euro conversion implicates the policy concerns underlying § 1.985–5, namely, the preservation of built-in exchange gains and losses arising from the fact that positions that had once been denominated in a nonfunctional currency will now be made or received in a QBU's functional currency.

In the context of the euro conversion, two items are of particular concern in properly accounting for exchange gains and losses: (1) section 988 transactions denominated in a legacy currency other than the QBU's legacy functional currency, and (2) unremitted earnings of a branch with a legacy functional currency different from the home office's legacy functional currency. In both these instances, positions that had previously been accounted for in a nonfunctional currency (against which exchange gains and loses would be computed) will, after the conversion, be accounted for in euros (against which exchange gains and losses would not be computed when a QBU's functional currency is also the euro).

Rather than requiring immediate recognition, as would be required under § 1.985–5, the temporary regulations provide special rules for the euro conversion. These rules provide that for affected section 988 transactions (other than transactions in or holdings of nonfunctional currency cash), exchange gains and losses that would have been recognized immediately if the § 1.985–5 change in functional currency rules applied will be deferred until otherwise realized. This is accomplished by providing that section 988 transactions continue to be treated as nonfunctional currency transactions under the principles of section 988 even though the remaining payments on the asset or liability will be made in the QBU's new functional currency (i.e., the euro).

In response to comments by taxpayers, an election is provided for QBUs to realize exchange gain or loss on accounts receivable and payable immediately prior to the year of change. A QBU making this election must realize exchange gains and losses on all of its accounts receivable and payable that are legacy currency denominated section 988 transactions. The election responds to the administrative burdens associated with tracking exchange gains and losses on large quantities of accounts receivable and payable. Taxpayers not making the election will continue to treat these positions as section 988 transactions under the general rule described above.

Exchange gains and losses on transactions in, or holdings of, nonfunctional currency cash are recognized immediately because cash accounts are generally turned over rapidly and the administrative burdens in tracking exchange gains and losses outweigh the benefits of deferral.

The regulations also provide special rules for taking into account exchange gain or loss when the taxpayer and a branch of the taxpayer change their functional currencies to the euro. The rules provide that exchange gains and losses on unremitted earnings of affected branches be recognized ratably over a four-year period beginning in the year of change. Some commentators recommended that the principles of section 987 continue to be applied after the conversion. As in the case with cash, however, the Treasury and IRS believe that the administrative burdens for taxpayers and the government as well as the potential for abuse, outweigh the benefit of extended deferral.

These temporary regulations also provide rules for the proper translation of a QBU's balance sheet accounts in a manner that preserves any accrued but unrecognized currency gain or loss. These rules are consistent with the existing § 1.985–5, change in functional currency rules.

III. Other Issues

Finally, these regulations do not address certain issues that taxpayers have commented upon that are not unique to the euro conversion. In particular, these regulations do not address the deductibility of costs associated with the euro conversion and foreign tax credit mismatches that can occur as a result of tax accounting differences between the United States and other countries.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information: The principal authors of these regulations are Howard A. Wiener of the Office of the Associate Chief Counsel (International) and Thomas Preston of the Office of Associate Chief Counsel (Domestic).

Other personnel from the IRS and Treasury Department also participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.985–1, paragraph (c)(6) is amended by adding a sentence at the end to read as follows:

§ 1.985–1 Functional currency.

* * * * *

(c) * * *

(6) * * * For special rules relating to the conversion to the euro, see § 1.985–8T.

* * * * *

§ 1.985–4 [Amended]

Par. 3. In § 1.985–4, the last sentence of paragraph (a) is amended by removing the reference ''§ 1.985–2'' and adding ''§ 1.985–2 or 1.985–8T'' in its place.

Par. 4. Section 1.985–8T is added to read as follows:

§ 1.985–8T Special rules applicable to the European Monetary Union (conversion to the euro) (temporary).

(a) *Definitions*—(1) *Legacy currency.* A legacy currency is the national currency of a participating member state of the European Union used prior to the substitution of the euro for the national currency of that state in accordance with the Treaty on European Union signed February 7, 1992. The term legacy currency shall also include the European Currency Unit.

(2) *Conversion rate.* The conversion rate is the rate at which the euro is substituted for a legacy currency.

(b) *Operative rules*—(1) *Initial adoption.* A QBU (as defined in § 1.989(a)–1(b)) whose first taxable year begins after the euro has been substituted for a legacy currency may not adopt that legacy currency as its functional currency.

(2) *QBU with a legacy functional currency*—(i) *Required change.* A QBU with a legacy currency as its functional currency is required to change its functional currency to the euro beginning the first day of the first taxable year:

(A) That begins on or after the day that the euro is substituted for that legacy currency (in accordance with the Treaty on European Union); and

(B) In which the QBU begins to maintain its books and records (as described in § 1.989(a)–1(d)) in the euro.

(ii) Notwithstanding paragraph (b)(2)(i) of this section, a QBU with a legacy currency as its functional currency is required to change its functional currency to the euro no later than the last taxable year beginning on or before the first day such legacy currency is no longer valid legal tender.

(iii) *Consent of Commissioner.* A change made pursuant to paragraph (b)(2)(i) of this section shall be deemed to be made with the consent of the Commissioner for purposes of § 1.985–4. A QBU changing its functional currency to the euro pursuant to this paragraph (b)(2) must make adjustments as provided in paragraph (c) of this section.

(3) *Statement to file upon change.* With respect to a QBU that changes its functional currency to the euro under paragraph (b)(2) of this section, an affected taxpayer shall attach to its return for the taxable year of change a statement that includes the following: ''TAXPAYER CERTIFIES THAT A QBU OF THE TAXPAYER HAS CHANGED ITS FUNCTIONAL CURRENCY TO THE EURO PURSUANT TO TREAS. REG. § 1.985–8T.'' For purposes of this paragraph (b)(3), an affected taxpayer shall be in the case where the QBU is: a QBU of an individual U.S. resident (as a result of the activities of such individual), the individual; a QBU branch of a U.S. corporation, the corporation; a controlled foreign corporation (as described in section 957)(or QBU branch thereof), each United States shareholder (as described in section 951(b)); a partnership, each partner separately; a noncontrolled section 902 corporation (as described in section 904(d)(2)(E)) (or branch thereof), each domestic shareholder as described in § 1.902–1(a)(1); or a trust or estate, the fiduciary of such trust or estate.

(c) *Adjustments required*—(1) *In general.* A QBU that changes its functional currency to the euro pursuant to paragraph (b) of this section must make the adjustments described in paragraphs (c)(2) through (5) of this section. Section 1.985–5 shall not apply.

(2) *Determining the euro basis of property and the euro amount of liabilities and other relevant items.* The euro basis in property and the euro amount of liabilities and other relevant items shall equal the product of the legacy functional currency adjusted basis or amount of liabilities multiplied by the applicable conversion rate.

(3) *Taking into account exchange gain or loss on legacy currency section 988 transactions*—(i) *In general.* Except as provided in paragraphs (c)(3) (iii) and (iv) of this section, a legacy currency denominated section 988 transaction (determined after applying section 988(d)) outstanding on the last day of the taxable year immediately prior to the year of change shall continue to be treated as a section 988 transaction after the change and the principles of section 988 shall apply.

(ii) *Examples.* The application of this paragraph (c)(3) may be illustrated by the following examples:

Example 1. X, a calendar year QBU on the cash method of accounting, uses the deutschmark as its functional currency. X is not described in section 1281(b). On July 1, 1998, X converts 10,000 deutschmarks(DM) into Dutch guilders(ƒl) at the spot rate of ƒl1 = DM1 and loans the 10,000 guilders to Y (an unrelated party) for one year at a rate of 10% with principal and interest to be paid on June 30, 1999. On January 1, 1999, X changes its functional currency to the euro pursuant to this section. The euro/deutschmark conversion rate is set by the European Council at 1= DM2. The euro/guilder conversion rate is set at 1 = ƒl2.25. Accordingly, under the terms of the note, on June 30, 1999, X will receive 4444.44 (ƒl10,000/2.25) of principal and 444.44 (ƒl1,000/2.25) of interest. Pursuant to this paragraph (c)(3), X will realize an exchange loss on the principal computed under the principles of § 1.988–2(b)(5). For this purpose, the exchange rate used under § 1.988–2(b)(5)(i) shall be the guilder/euro conversion rate. The amount under § 1.988–2(b)(5)(ii) is determined by translating the ƒl10,000 at the guilder/deutschmark spot rate on July 1, 1998, and translating that deutschmark amount into euros at the deutschmark/euro conversion rate. Thus, X will compute an exchange loss for 1999 of 555.56 determined as follows: [4444.44 (ƒl10,000/2.25)– 5000 ((ƒl10,000/1)/2) =– 555.56]. Pursuant to this paragraph (c)(3), the character and source of the loss are determined pursuant to section 988 and regulations thereunder. Because X uses the cash method of accounting for the interest on this debt instrument, X does not realize exchange gain or loss on the receipt of that interest.

Example 2. (i) X, a calendar year QBU on the accrual method of accounting, uses the deutschmark as its functional currency.

On February 1, 1998, X converts 12,000 deutschmarks into Dutch guilders at the spot rate of ƒl1 = DM1 and loans the 12,000 guilders to Y (an unrelated party) for one year at a rate of 10% with principal and interest to be paid on January 31, 1999. In addition, assume the average rate (deutschmark/guilder) for the period from February 1, 1998, through December 31, 1998 is ƒl1.07 = DM1. Pursuant to § 1.988–2(b)(2)(ii)(C), X will accrue eleven months of interest on the note and recognize interest income of DM1028.04 (fl1100/1.07) in the 1998 taxable year.

(ii) On January 1, 1999, the euro will replace the deutschmark as the national currency of Germany pursuant to the Treaty on European Union signed February 7, 1992. Assume that on January 1, 1999, X changes its functional currency to the euro pursuant to this section. The euro/deutschmark conversion rate is set by the European Council at 1 = DM2. The euro/guilder conversion rate is set at 1 = fl2.25. In 1999, X will accrue one month of interest equal to 44.44 (fl100/2.25). On January 31, 1999, pursuant to the note, X will receive interest denominated in euros of 533.33 (fl1200/2.25). Pursuant to this paragraph (c)(3), X will realize an exchange loss in the 1999 taxable year with respect to accrued interest computed under the principles of § 1.988–2(b)(3). For this purpose, the exchange rate used under § 1.988–2(b)(3)(i) is the guilder/euro conversion rate and the exchange rate used under § 1.988–2(b)(3)(ii) is the deutschmark/euro conversion rate. Thus, with respect to the interest accrued in 1998, X will realize exchange loss of 25.13 under § 1.988–2(b)(3) as follows: [488.89 (fl1100/2.25)– 514.02 (DM1028.04/2) = – 25.13]. With respect to the one month of interest accrued in 1999, X will realize no exchange gain or loss since the exchange rate when the interest accrued and the spot rate on the payment date are the same.

(iii) X will realize exchange loss of 666.67 on repayment of the loan principal computed in the same manner as in *Example 1* [5333.33 (fl12,000/2.25)– 6000 fl12,000/1)/2)]. The losses with respect to accrued interest and principal are characterized and sourced under the rules of section 988.

(iii) *Special rule for legacy nonfunctional currency.* The QBU shall realize or otherwise take into account for all purposes of the Internal Revenue Code the amount of any unrealized exchange gain or loss attributable to nonfunctional currency (as described in section 988(c)(1)(C)(ii)) that is denominated in a legacy currency as if the currency were disposed of on the last day of the taxable year immediately prior to the year of change. The character and source of the gain or loss are determined under section 988.

(iv) *Legacy currency denominated accounts receivable and payable*—(A) *In general.* A QBU may elect to realize or otherwise take into account for all purposes of the Internal Revenue Code the amount of any unrealized exchange gain or loss attributable to a legacy currency denominated item described in section 988(c)(1)(B)(ii) as if the item were terminated on the last day of the taxable year ending prior to the year of change.

(B) *Time and manner of election.* With respect to a QBU that makes an election described in paragraph (c)(3)(iv)(A) of this section, an affected taxpayer (as described in paragraph (b)(3) of this section) shall attach a statement to its tax return for the taxable year of change which includes the following: ''TAXPAYER CERTIFIES THAT A QBU OF THE TAXPAYER HAS ELECTED TO REALIZE CURRENCY GAIN OR LOSS ON LEGACY CURRENCY DENOMINATED ACCOUNTS RECEIVABLE AND PAYABLE UPON CHANGE OF FUNCTIONAL CURRENCY TO THE EURO.'' A QBU making the election must do so for all legacy currency denominated items described in section 988(c)(1)(B)(ii).

(4) *Adjustments when a branch changes its functional currency to the euro*—(i) *Branch changing from a legacy currency to the euro in a taxable year during which taxpayer's functional currency is other than the euro.* If a branch changes its functional currency from a legacy currency to the euro for a taxable year during which the taxpayer's functional currency is other than the euro, the branch's euro equity pool shall equal the product of the legacy currency amount of the equity pool multiplied by the applicable conversion rate. No adjustment to the basis pool is required.

(ii) *Branch changing from a legacy currency to the euro in a taxable year during which taxpayer's functional currency is the euro.* If a branch changes its functional currency from a legacy currency to the euro for a taxable year during which the taxpayer's functional currency is the euro, the taxpayer shall realize gain or loss attributable to the branch's equity pool under the principles of section 987, computed as if the branch terminated on the last day prior to the year of change. Adjustments under this paragraph (c)(4)(ii) shall be taken into account by the taxpayer ratably over four taxable years beginning with the taxable year of change.

(5) *Adjustments to a branch's accounts when a taxpayer changes to the euro*—(i) *Taxpayer changing from a legacy currency to the euro in a taxable year during which a branch's functional currency is other than the euro.* If a taxpayer changes its functional currency to the euro for a taxable year during which the functional currency of a branch of the taxpayer is other than the euro, the basis pool shall equal the product of the legacy currency amount of the basis pool multiplied by the applicable conversion rate. No adjustment to the equity pool is required.

(ii) *Taxpayer changing from a legacy currency to the euro in a taxable year during which a branch's functional currency is the euro.* If a taxpayer changes its functional currency from a legacy currency to the euro for a taxable year during which the functional currency of a branch of the taxpayer is the euro, the taxpayer shall take into account gain or loss as determined under paragraph (c)(4)(ii) of this section.

(6) *Additional adjustments that are necessary when a corporation changes its functional currency to the euro.* The amount of a corporation's euro currency earnings and profits and the amount of its euro paid-in capital shall equal the product of the legacy currency amounts of these items multiplied by the applicable conversion rate. The foreign income taxes and accumulated profits or deficits in accumulated profits of a foreign corporation that were maintained in foreign currency for purposes of section 902 and that are attributable to taxable years of the foreign corporation beginning before January 1, 1987, also shall be translated into the euro at the conversion rate.

(d) *Effective date.* This section applies to tax years ending after July 29, 1998.

Par. 5. Section 1.1001–5T is added to read as follows:

§ 1.1001–5T European Monetary Union (conversion to the euro)(temporary).

(a) *Conversion of currencies.* For purposes of § 1.1001–1(a), the conversion to the euro of legacy currencies (as defined in § 1.985–8T(a)(1)) is not the exchange of property for other property differing materially in kind or extent.

(b) *Effect of currency conversion on other rights and obligations.* For purposes of § 1.1001–1(a), if, solely as the result of the conversion of legacy currencies to the euro, rights or obligations denominated in a legacy currency become rights or obligations denominated in the euro, that event is not the exchange of property for other property differing materially in kind or extent. Thus, for example, when a debt instrument that requires payments of amounts denominated in a legacy currency becomes a debt instrument requiring payments of euros, that alteration is not a modification within the meaning of § 1.1001–3(c).

(c) *Effective date.* This section applies to tax years ending after July 29, 1998.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: July 17, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–20023 Filed 7–28–98; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI67–01–7275; FRL–6128–6]

Approval and Promulgation of Implementation Plans; Michigan: Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Removal of direct final rule amendment.

SUMMARY: On May 19, 1998, the Environmental Protection Agency (EPA) published a proposed rule (63 FR 27541) and a direct final rule (63 FR 27492) approving a correction to the State Implementation Plan (SIP) for the State of Michigan regarding the State's emission limitations and prohibitions for air contaminant or water vapor. The EPA determined that Michigan's air quality Administrative Rule, R336.1901 (Rule 901), was erroneously incorporated into the SIP and approved removal of Rule 901 from the approved Michigan SIP because Rule 901 does not have a reasonable connection to the national ambient air quality standards (NAAQS) and related air quality goals of the Clean Air Act. The EPA is removing the final rule amendment due to adverse comments and will summarize and address all relevant public comments in a subsequent final rule (based upon the proposed rule cited above).

EFFECTIVE DATE: This removal is effective July 29, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Victoria Hayden at (312) 886–4023 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Victoria Hayden, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone number (312) 886–4023.

I. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility

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

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

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, the 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 the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective.

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 September 28, 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)).

F. Protection of Children From Environmental Health Risks and Safety Risks

This direct final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by E.O. 12866.''

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and recordkeeping.

Accordingly, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart X—Michigan

§ 52.1174 Amended

2. Section 52.1174 is amended by removing paragraph (q).

Dated: July 9, 1998.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 98–20006 Filed 7–28–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[CO–001–0026a; FRL–6131–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Colorado; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Colorado plan and associated regulations for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines at 40 CFR part 60, subpart Cc, which were required pursuant to section 111(d) of the Clean Air Act (Act). The State's plan was submitted to EPA on April 13, 1998, in accordance with the requirements for adoption and submittal of State plans for designated facilities in 40 CFR part 60, subpart B. The State's plan establishes performance standards for existing MSW landfills and provides for the implementation and enforcement of those standards. EPA finds that Colorado's plan for existing MSW landfills adequately addresses all of the Federal requirements applicable to such plans.

DATES: This direct final rule is effective on September 28, 1998 without further notice, unless EPA receives adverse comment by August 28, 1998. If adverse comment is received, EPA will publish a timely withdrawl of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments on this action may be mailed to Vicki Stamper, 8P2–A, at the EPA Region VIII Office listed. Copies of the documents relative to this action are available for inspection during normal business hours at the Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Act, EPA has established procedures whereby States submit plans to control certain existing sources of ''designated pollutants.'' Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not ''criteria pollutants'' (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, EPA establishes emissions guidelines in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the ''designated facility'' as defined at 40 CFR 60.21(b)). Thus, a State's section 111(d) plan for a designated facility must comply with the emission guideline for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published Emission Guidelines (EG) for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c-60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750–60.759). (See 61 FR 9905–29.) The pollutant regulated by the NSPS and EG is MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine whether control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.31c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), States were required to either (1) submit a plan for the control of the designated pollutant to which the EG applies or (2) submit a negative declaration if there were no designated facilities in the State within nine months after publication of the EG, or by December 12, 1996.

EPA has been involved in litigation over the requirements of the MSW landfill EG and NSPS since the summer of 1996. On November 13, 1997, EPA issued a notice of proposed settlement in National Solid Wastes Management Association v. Browner, et. al., No. 96–1152 (D.C. Cir), in accordance with section 113(g) of the Act. (See 62 FR 60898.) It is important to note that the proposed settlement does not vacate or void the existing MSW landfill EG or NSPS. Pursuant to the proposed settlement agreement, EPA published a direct final rulemaking on June 16, 1998, in which EPA is amending 40 CFR part 60, subparts Cc and WWW, to add clarifying language, make editorial amendments, and to correct typographical errors. See 63 FR 32783–32784, 32743–32753. EPA regulations at 40 CFR 60.23(a)(2) provide that a State has nine months to adopt and submit any necessary State Plan revisions after publication of a final revised emission guideline document. Thus, States are not yet required to submit State Plan revisions to address the June 16, 1998 direct final amendments to the EG. In addition, as stated in the June 16, 1998 preamble, the changes to 40 CFR part 60, subparts Cc and WWW, do not significantly modify the requirements of those subparts. See 63 FR 32744. Accordingly, the MSW landfill EG published on March 12, 1996 was used as a basis for EPA's review of Colorado's submittal.

II. Analysis of State's Submittal

On April 13, 1998, the State of Colorado submitted its plan and regulations (hereafter referred to as the ''State Plan'') for implementing EPA's MSW landfill EG. The Colorado State Plan includes the ''111(d) Plan for Existing Municipal Solid Waste Landfills Existing in Colorado'' and the State's implementing regulations in Part A of Colorado Regulation No. 6.

Colorado has incorporated by reference the EG of 40 CFR part 60, subpart Cc in Part A of Colorado Regulation No. 6. In addition, the State has adopted language in Part A of Colorado Regulation No. 6 which clarifies the requirements applicable to existing MSW landfills in Colorado. Part A of Colorado Regulation No. 6 also includes compliance deadlines to address the compliance timelines of the EG and the increments of progress requirements of 40 CFR part 60, subpart B. Thus, the State's regulations adequately address the requirements of the EG, including the required applicability, emission limitations, test methods and procedures, reporting and recordkeeping requirements, and compliance times. Specifically, Colorado's regulation requires that existing MSW landfills that: (1) Accepted waste since November 8, 1987; (2) have a design capacity equal to or greater than 2.5 million megagrams (Mg) or 2.5 million m^3; and (3) have a NMOC emission rate, calculated in accordance with the procedures of 40 CFR 60.754, equal to or greater than 50 Mg/year to install a gas collection and control system meeting the requirements of 40 CFR 60.33c(b) and (c) within thirty months from the effective date of the State regulation (or, for those existing MSW landfills whose initial NMOC emission rate is less than 50 Mg/yr on the effective date of the State regulation, within thirty months after submittal of the first annual NMOC emission rate report showing emissions equal to or exceeding 50 Mg/yr).

The State Plan also includes documentation showing that all requirements of 40 CFR part 60, subpart B have been met. Specifically, the State Plan includes a demonstration of legal authority to adopt and implement the plan, an emissions inventory, increments of progress compliance deadlines, a commitment to submit to EPA annual State progress reports on plan implementation and enforcement, and documentation that the State addressed the public participation requirements of 40 CFR part 60.23. In addition, as stated above, the State has adopted emission standards and compliance schedules into an enforceable State regulation that is no less stringent than the EG.

Consequently, EPA finds that the State Plan and implementing regulations meet all of the requirements applicable to such plans in 40 CFR part 60, subparts B and Cc. The State did not, however, submit evidence of authority to regulate existing MSW landfills in Indian Country. Therefore, EPA is not approving this State Plan as it relates to those sources.

More detailed information on the requirements for an approvable plan and Colorado's submittal can be found in the Technical Support Document (TSD) accompanying this notice, which is available upon request.

III. Final Action

Based on the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving Colorado's plan and associated regulations, as submitted on April 13, 1998, for the control of landfill gas from existing MSW landfills, except for those existing MSW landfills located in Indian Country. As provided by 40 CFR 60.28(c), any revisions to Colorado's State Plan or associated regulations will not be considered part of the applicable plan until submitted by the State in accordance with 40 CFR 60.28(a) or (b), as applicable, and approved by EPA in accordance with 40 CFR part 60, subpart B.

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

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should adverse comments be filed. This rule will be effective September 28, 1998 without further notice unless the Agency receives adverse comments by August 28, 1998.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 28, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review,'' review.

The final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because State Plan approvals under section 111 of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal State Plan approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning State Plans on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

E. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Colorado's audit privilege and penalty immunity law (sections 13–25–126.5, 13–90–107, and 25–1–114.5 Colorado Revised Statutes (C.R.S.); S.B. 94–139, effective June 1, 1994) or its impact upon any approved provision in the State Plan, including the submittal at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Colorado's audit privilege and immunity law. A State audit privilege and immunity law can affect only State enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 114, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State Plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a State audit privilege or immunity law.

F. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 28, 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 must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: July 20, 1998.

William P. Yellowtail,

Regional Administrator, Region VIII.

Part 62, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

SUBPART G—[AMENDED]

2. Subpart G is amended by adding an undesignated center heading and sections 62.1350, 62.1351 and 62.1352 to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.1350 Identification of plan.

''111(d) Plan for Existing Municipal Solid Waste Landfills Existing in Colorado'' and the associated State regulations in Part A of Colorado Regulation No. 6, submitted by the State on April 13, 1998.

§ 62.1351 Identification of sources.

The plan applies to all existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991 that accepted waste at any time since November 8, 1987 or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

§ 62.1352 Effective date.

The effective date of the plan for municipal solid waste landfills is September 28, 1998.

[FR Doc. 98–20282 Filed 7–28–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–246; RM–9205, RM–9250]

Radio Broadcasting Services; Walla Walla and Pullman, WA, and Hermiston, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mark Jacky Broadcasting, substitutes Channel 256C2 for Channel 256C3 at Walla Walla, Washington, and modifies Station KUJ–FM's license accordingly. To accommodate the upgrade, we substitute Channel 263A for Channel 257A at Hermiston, Oregon, and modify Station KQFM(FM)'s license accordingly (RM–9205). *See* 63 FR 194, January 5, 1998. At the request of counterproponent Palouse Country, Inc., we also substitute Channel 258C for Channel 258C1 at Pullman, Washington, and modify Section KZZL–FM's license accordingly (RM–9205). Channel 256C2 can be allotted to Walla Walla in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at Station KUJ–FM's requested site. The coordinates for Channel 256C2 at Walla Walla are North Latitude 45–59–38 and West Longitude 118–10–47. *See* Supplementary Information, *infra.*

EFFECTIVE DATE: August 31, 1998.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–246, adopted July 8, 1998, and released July 17,1998. The full text of this Commission decision is available for inspection and copying during 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 contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Channel 263A can be allotted at Hermiston at Station KQFM(FM)'s presently licensed site. The coordinates for Channel 263A are North Latitude 45–51–57 and West Longitude 119–18–45. In addition, Channel 258C can be allotted to Pullman without the imposition of a site restriction, at Station KZZL–FM's requested site. The coordinates for Channel 258C are North Latitude 46–40–29 and West Longitude 116–58–19. Since Pullman is located within 320 kilometers (200 miles) of the U.S–Canadian border, Canadian concurrence has been obtained. With this action, this proceeding terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 256C3 and adding Channel 256C2 at Walla Walla; and by removing Channel 258C1 and adding Channel 258C at Pullman.

§ 73.303 [Amended]

3. Section 73.303(b), the Table of FM Allotments under Oregon, is amended by removing Channel 257A and adding Channel 263A at Hermiston.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–19906 Filed 7–28–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 242

[DFARS Case 97–D012]

Defense Federal Acquisition Regulation Supplement; Contractor Insurance/Pension Reviews

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise guidance pertaining to the conduct of Contractor Insurance/Pension Reviews (CIPRs). The rule clarifies requirements for conducting a CIPR, eliminates the requirement to conduct a CIPR at least every 2 years, and requires the performance of a special CIPR under certain circumstances.

EFFECTIVE DATE: July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Rick Layser, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 97–D012.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises the guidance in DFARS Subpart 242.73 pertaining to the conduct of CIPRs. A proposed rule was published in the **Federal Register** on August 20, 1997 (62 FR 44249). Ten respondents submitted comments on the proposed rule. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

The Department of Defense certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule applies only to contractors whose annual qualifying sales to the Government exceed $40 million, and no small entities are known to meet this criterion.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 242

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 242 is amended as follows:

1. The authority citation for 48 CFR Part 242 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 242—CONTRACT ADMINISTRATION

2. Sections 242.7301 and 242.7303 are revised to read as follows:

242.7301 General.

(a) The administrative contracting officer (ACO) is responsible for determining the allowability of insurance/pension costs in Government contracts. Defense Logistics Agency (DLA) insurance/pension specialists and Defense Contract Audit Agency (DCAA) auditors assist ACOs in making these determinations by conducting CIPRs.

(1) A CIPR is an in-depth evaluation of a contractor's—

(i) Insurance program;

(ii) Pension plans;

(iii) Other deferred compensation plans; and

(iv) Related policies, procedures, practices, and costs.

(2) A special CIPR is a joint DLA/DCAA review that concentrates on specific areas of the contractor's insurance program, pension plan, or other deferred compensation plan.

(b) DLA is the DoD Executive Agency for the performance of all CIPRs conducted under 242.7302.

242.7302 Requirements.

(a)(1) A CIPR shall be conducted only when—

(i) A contractor has $40 million of qualifying sales to the Government during the contractor's preceding fiscal year; and

(ii) The ACO, with advice from DLA insurance/pension specialists and DCAA auditors, determines a CIPR is needed based on a risk assessment of the contractor's past experience and current vulnerability.

(2) Qualifying sales are sales for which cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.403, or that are contracts priced on other than a firm-fixed-price or fixed-price with economic price adjustment basis. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(b) A special CIPR shall be performed for a contractor (including, but not limited to, a contractor meeting the requirements in paragraph (a) of this section) when any of the following circumstances exists, but only if the circumstance(s) may result in a material impact on Government contract costs:

(1) Information reveals a deficiency in the contractor's insurance/pension program.

(2) The contractor proposes or implements changes in its insurance, pension, or deferred compensation plans.

(3) The contractor is involved in a merger, acquisition, or divestiture.

(4) The Government needs to follow up on contractor implementation of prior CIPR recommendations.

(c) The DCAA auditor shall use relevant findings and recommendations of previously performed CIPRs in determining the scope of any audits of insurance and pension costs.

(d) When a Government organization believes that a review of the contractor's insurance/pension program should be performed, that organization should provide a recommendation for a review to the ACO. If the ACO concurs, the review should be performed as part of an ACO-initiated special CIPR or as part of a CIPR already scheduled for the near future.

242.7303 Responsibilities.

(a) The ACO is responsible for—

(1) Determining the need for a CIPR under 242.7302;

(2) Requesting and scheduling the reviews with the appropriate DLA activity;

(3) Notifying the contractor of the proposed date and purpose of the review, and obtaining any preliminary data needed by the DLA insurance/ pension specialist or the DCAA auditor;

(4) Reviewing the CIPR report, advising the contractor of the recommendations contained therein, considering contractor comments, and rendering a decision on those recommendations;

(5) providing other interested contracting officers copies of documents related to the CIPR;

(6) Ensuring adequate follow-up on all CIPR recommendations; and

(7) Performing contract administration responsibilities related to Cost Accounting Standards administration as described in FAR Subparts 30.2 and 30.6.

(b) The DLA insurance/pension specialist is responsible for—

(1) Preparing and maintaining the schedule of CIPRs to be performed during the next 12 months and providing the military departments and DCAA a copy of the schedule;

(2) Issuing a technical report on the contractor's insurance/pension plans for incorporation into the final CIPR report based on an analysis of the contractor's pension program, insurance program, and other related data;

(3) Leading the team that conducts the review. Another individual may serve as the team leader when both the insurance/pension specialist and the individual agree. The team leader is responsible for—

(i) Maintaining complete documentation for CIPR reports;

(ii) To the extent possible, resolving discrepancies between audit reports and CIPR draft reports prior to releasing the final CIPR report;

(iii) Preparing and distributing the final CIPR report;

(iv) Providing the final audit report and/or the insurance/pension specialist's report as an attachment to the CIPR report; and

(v) Preparing a draft letter for the administrative contracting officer's use in notifying the contractor of CIPR results; and

(4) When requested, advising administrative contracting officers and other Government representatives concerning contractor insurance/ pension matters.

(c) The DCAA auditor is responsible for—

(1) Participating as a member of the CIPR team or serving as the team leader (see paragraph (b)(3) of this section);

(2) Issuing an audit report for incorporation into the final CIPR report based on an analysis of the contractor's books, accounting records, and other related data; and

(3) Performing contract audit responsibilities related to Cost Accounting Standards administration as described in FAR Subparts 30.2 and 30.6.

[FR Doc. 98–20187 Filed 7–28–98; 8:45am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980717183–8183–01; I.D. 070298D]

RIN 0648–AK35

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Little Tunny Exempted Gillnet Fishery

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

ACTION: Final rule; request for comments.

SUMMARY: NMFS issues this final rule to modify the regulations implementing the Northeast Multispecies Fishery Management Plan (FMP). This rule establishes a seasonal exempted gillnet fishery for little tunny (*Euthynnus alleteratus*) in a portion of the Southern New England (SNE) Regulated Mesh Area. In addition, in accordance with NMFS regulations related to issuance of exempted fishing permits (EFPs), NMFS requests comments on the issuance of EFPs to retain Atlantic bonito as an allowable incidental species in the little tunny fishery. The intent of this action is to provide an additional fishing opportunity consistent with the conservation objectives of the FMP.

DATES: Effective July 24, 1998. Comments must be received on or before August 10, 1998.

ADDRESSES: Copies of the Environmental Assessment supporting the little tunny exemption may be obtained from Jon Rittgers, Acting Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930.

Comments regarding the burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to the Acting Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for exempted fishing permits for retention of bonito as an allowable incidental species should be sent to the Highly Migratory Species (HMS) Division, Office of Sustainable Fisheries, One Blackburn Drive, Gloucester, MA 01930, telephone (978) 281–9260.

Requests for letters of authorization to fish for little tunny should be sent to the Sustainable Fisheries Division, One Blackburn Drive, Gloucester, MA 01930, telephone (978) 281–9370.

Requests for reporting forms for marine mammal interactions and registration forms for Authorization Certificates should be sent to the Acting Regional Administrator, ATTN: Sandra Arvilla, telephone (978) 281–9264.

FOR FURTHER INFORMATION CONTACT: Bonnie L. VanPelt, Fishery Management Specialist, 978–281–9244.

SUPPLEMENTARY INFORMATION: The procedure for adding, modifying, or deleting exempted fisheries is found in § 648.80. Additions, deletions or modifications to the list of exempted fisheries may be made by the Administrator, Northeast Region, NMFS (Regional Administrator) after consultation with the New England Fishery Management Council (Council), if the Regional Administrator determines, based on available data or information, that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent by weight of the total catch and that such exemption will not jeopardize the stock rebuilding objectives of the FMP. The Regional Administrator may impose specific gear, area, seasonal, or other limitations appropriate to reduce bycatch of regulated species.

In response to a request from an individual fisher, the Regional Administrator, after reviewing the analysis and all available data, has determined that an exempted gillnet fishery for little tunny meets the exemption requirements for the period September 1 through October 31, in the area defined by a line running from the Rhode Island shoreline at 41°18.2' N. lat. and 71°51.5' W. long. (Watch Hill, RI) southwesterly through Fishers Island, NY; to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY, southeasterly to 41°06.5' N. lat. and 71°50.2' W. long.; east northeast through Block Island, RI, to 41°15' N. lat. and 71°07' W. long.; then due north to the intersection of the RI-MA shoreline.

Based on this analysis, this rule allows an exempted gillnet fishery for little tunny from the period September 1 through October 31, in the requested portion of the SNE Regulated Mesh Area described above. Vessels fishing under this exemption program are required to obtain and have on board a little tunny letter of authorization issued by the Regional Administrator and are subject to a minimum mesh requirement size of 5.5 inches (13.97 cm) throughout the net. Such vessels may retain little tunny and the allowable incidental species authorized for the SNE Regulated Mesh Area specified at § 648.80(b)(3). Vessels fishing in this exemption may not possess regulated species and are subject to appropriate net stowage requirements, if nets of mesh size less than 5.5 inches (13.97 cm) are on board.

In addition, a limited number of vessels may retain Atlantic bonito (*Sarda sarda*) as an allowable incidental species, provided they obtain an exempted fishing permit (EFP) from the HMS Division (see **ADDRESSES**), telephone (978) 281–9260. The EFP exempts the vessel from the regulations governing authorized fishing gear and retention of bonito as an allowable incidental species under 50 CFR 285.51. An EFP is required because the gillnet gear proposed for the fishery is not an authorized fishing gear when fishing for, catching, retaining, or possessing HMS species subject to regulations which include, but are not limited to, Atlantic bonito. This permit is issued pursuant to the provisions of §§ 285.7 and 600.745 in order to collect data on the nature and extent of the fishery. Although participation in the bonito allowable incidental fishery is expected to be small, the Director, Office of Sustainable Fisheries, may set a cap at his/her discretion if fishery conservation and/or protected resource goals are determined to be in jeopardy. In accordance with the requirements of 50 CFR 600.745(b)(3), NMFS requests comments on the issuance of EFPs to retain Atlantic bonito as an allowable incidental species.

NMFS is currently developing a harbor porpoise take reduction plan. Vessels fishing under this exemption will be required to comply with the porpoise protection measures under the harbor porpoise take reduction plan, when implemented. These gillnet vessels must also comply with the Atlantic large whale take reduction plan regulations, which were effective November 15, 1997 (50 CFR 229.32). Particpants in this fishery are considered to be participating in the Northeast sink gillnet fishery, a Category I fishery as defined under the Marine Mammal Protection Act. As such, under regulations at 50 CFR part 229, they also will be required to: (1) Obtain a marine mammal authorization certificate; (2) report all injuries and mortalities of marine mammals to NMFS within 48 hours of returning from a fishing trip; and, (3) carry an observer if so requested by NMFS. Observers will collect data on interactions with marine mammals and other protected species, as well as determine fishery effort and further describe fishery characteristics.

Vessel owners that currently hold Federal Northeast multispecies permits and are participating in the gillnet fishery may use their existing Marine Mammal Protection Certificate to enroll in the exempted fishery for little tunny. However, as participants in a Category I fishery, they must still comply with the other requirements under 50 CFR part 229 as described above.

Vessel owners that do not hold Federal Northeast multispecies permits who wish to participate in this fishery should contact the Acting Regional Administrator (see **ADDRESSES**), telephone (978) 281–9264, for guidance on obtaining the Marine Mammal Protection Certificate.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice and opportunity for comment under 5 U.S.C. 553(b)(B) for the little tunny gillnet exempted fishery. Provisions under the FMP give the Regional Administrator authority to add, delete, or modify exempted fisheries based on the percentage of regulated species caught. Public meetings held by the Council to discuss this management measure, as well as consultation with the Council on any request for an exemption during a public Council meeting, provided full prior notice and opportunity for public comment to be made and considered, making additional opportunity for public comment unnecessary. Under 5 U.S.C. 553(d)(1), this rule is not subject to a delay in effectiveness because it relieves a restriction.

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

This rule contains or refers to two collection-of-information requirements subject to the PRA. These collections of information have been approved by OMB, under OMB control numbers 0648–0202 and 0648–0309. The estimated response time for a request for a little tunny letter of authorization is 2 minutes per call (OMB 0648–0202). Also, it is estimated that an average of 16 to 35 gillnet vessels will submit requests for Atlantic bonito EFPs. The burden hours approved for this request is 1 hour for the initial issuance of the EFP, and 1 hour for any subsequent requests (OMB 0648–0309). These estimated response times include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding any of these burden estimates or any other aspect of the collection of information to NMFS and to OMB (see **ADDRESSES**).

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

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 23, 1998.

Rolland H. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648–FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, the definitions for ''Bonito'' and ''Little tunny'' are added, in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Bonito means *Sarda sarda*.

* * * * *

Little tunny means *Euthynnus alleteratus*.

* * * * *

3. In § 648.14, paragraphs (a)(36) and (a)(43) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(36) Fish with, use, or have available for immediate use within the area described in § 648.80(b)(1), nets of mesh size smaller than the minimum size specified in § 648.80(b)(2), except as provided in § 648.80(b)(3), (b)(9), (d), (e), and (i), or unless the vessel has not been issued a multispecies permit and fishes for multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(43) Violate any of the provisions of § 648.80(a)(4), the Cultivator Shoals whiting fishery exemption area; (a)(5), the Stellwagen Bank/Jeffreys Ledge (SB/JL) juvenile protection area; (a)(8), Small Mesh Area 1/Small Mesh Area 2; (a)(9), the Nantucket Shoals dogfish fishery exemption area; (a)(11), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a) (12), the GOM/GB monkfish gillnet exemption area; (a)(13), the GOM/GB dogfish gillnet exemption area; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(7), the SNE dogfish gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; or (b)(9), the SNE little tunny gillnet exemption area. A violation of any of these paragraphs is a separate violation.

* * * * *

4. In § 648.80, paragraph (b)(2)(iii) is revised, and paragraph (b)(9) is added to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(b) * * *

(2) * * *

(iii) *Other restrictions and exemptions*. Vessels are prohibited from fishing in the SNE Regulated Mesh Area except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (c), (e), (h), and (i) of this section, if fishing under a NE multispecies DAS, if fishing under the small vessel exemption specified in § 648.82(b)(3), if fishing under a scallop state waters exemption specified in § 648.54, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.81(e).

* * * * *

(9) *SNE Little Tunny Gillnet Exemption Area*. A vessel may fish with gillnet gear in the SNE Little Tunny Gillnet Exemption Area when not operating under a NE multispecies DAS with mesh size smaller than the minimum required in the SNE Regulated Mesh Area, if the vessel complies with the requirements specified in paragraph (b)(9)(i) of this section. The SNE Little Tunny Gillnet Exemption Area is defined by a line running from the Rhode Island shoreline at 41°18.2' N. lat. and 71°51.5' W. long. (Watch Hill, RI) southwesterly through Fishers Island, NY; to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY, southeasterly to 41°06.5' N. lat. and 71°50.2' W. long.; east northeast through Block Island, RI, to 41°15' N. lat. and 71°07' W. long.; then due north to the intersection of the RI-MA shoreline.

(i) *Requirements*. (A) A vessel fishing under this exemption may fish only for, possess on board, or land little tunny and the allowable incidental species and amounts specified in paragraph (b)(3) and, if applicable, paragraph (b)(9)(i)(B) of this section. Vessels fishing under this exemption may not possess regulated species.

(B) A vessel may possess bonito as an allowable incidental species provided an exempted fishing permit is obtained from the Highly Migratory Species Division (HMS), Office of Sustainable Fisheries, NMFS, Gloucester, Massachusetts. The HMS reserves the authority to cap the number of participants who retain bonito as allowable incidental species should conservation and/or protected resource concerns develop.

(C) The vessel must have a letter of authorization issued by the Regional Administrator on board.

(D) All gillnets must have a minimum mesh size of 5.5 inch (13.97 cm) diamond mesh throughout the net.

(E) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(9)(i)(D) of this section must be stowed in accordance with one of the methods described under § 648.81(e) while fishing under this exemption.

(F) Fishing is confined to September 1 through October 31.

(ii) The Regional Adminstrator shall conduct periodic sea sampling to evaluate the likelihood of gear interactions with protected resources.

* * * * *

[FR Doc. 98–20258 Filed 7-24-98; 3:43 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980603145–8186–02; I.D. 052998C]

RIN 0648–AL33

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; Bank/Area-Specific Harvest Guidelines

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement a regulatory amendment under the framework procedures of the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region. This rule allocates the overall 1998 Northwestern Hawaiian Islands (NWHI) harvest guideline of 286,000 lobsters (spiny and slipper combined) among three individual fishing banks and a fourth combined area. Specifically, no more than 70,000 lobsters may be harvested from Necker Island; no more than 20,000 lobsters may be harvested from Gardner Pinnacles; no more than 80,000 lobsters may be harvested from Maro Reef; and no more than 116,000 lobsters may be harvested from all the other remaining NWHI banks combined within Crustaceans Permit Area 1. This rule is intended to protect the lobster resources at each fishing ground, to obtain better data on the lobster stocks, and to conserve the resource.

DATES: This final rule is effective from July 23, 1998 through December 31, 1998.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis and the Final Regulatory Flexibility Analysis for this action are available from Alvin Katekaru, Fishery Management

Specialist, Pacific Islands Area Office, NMFS, 2570 Dole St., Honolulu, HI 96822.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru at (808) 973–2985 or Kitty Simonds, Executive Director, Western Pacific Fishery Management Council at (808) 522–8220.

SUPPLEMENTARY INFORMATION: On June 9, 1998, NMFS published a proposed rule in the **Federal Register** (63 FR 31406) proposing to reallocate the overall harvest guideline of 286,000 lobsters (spiny and slipper lobster combined) for the 1998 NWHI lobster fishery. The harvest guideline was published in the **Federal Register** on June 3, 1998, at 63 FR 30147. Under this final rule, the 1998 harvest guideline is distributed among four lobster banks/areas whereby no more than 70,000 lobsters may be harvested at Necker Island; no more than 20,000 lobsters may be harvested at Gardner Pinnacles; no more than 80,000 lobsters may be harvested at Maro Reef; and no more than 116,000 lobsters may be harvested from all the other remaining NWHI banks combined. Once a harvest guideline for a specific bank/area (fishing grounds) is reached or projected to be reached, the Southwest Regional Administrator, NMFS, will announce, at least 24 hours in advance, closure of the fishing grounds via electronic communication to each of the vessels participating in the 1998 fishery. The entire lobster fishery will close when the entire harvest guideline of 286,000 lobsters is attained.

The Western Pacific Fishery Management Council (Council) recommended bank/area-specific harvest guidelines as its preferred alternative in the NWHI lobster fishery to help prevent local bank depletion at Necker Island, Gardner Pinnacles, and Maro Reef; to promote broader distribution of fishing effort among the remaining NWHI banks; to obtain better data on the lobster stocks; and to conserve the resource. This action applies only to the 1998 lobster season, which began July 1, 1998, and will end on December 31, 1998.

The Council also considered two other alternatives which were rejected: no action (NWHI-wide fishing area), and full bank-specific harvest guidelines (covering 11 of the 14 lobster grounds for which exploitable population estimates are available). Comments on the proposed rule and on an initial regulatory flexibility analysis (IRFA) and an environmental assessment were solicited through June 24, 1998.

Comments and Responses

No written comments were received from the public on the proposed rule during the comment period.

Changes From the Proposed Rule

There is no change in the regulatory text between the final rule and proposed rule.

Classification

The NMFS prepared a final regulatory flexibility analysis (FRFA) in compliance with the Regulatory Flexibility Act. The FRFA provides additional data/analysis supplementing the IRFA, which was summarized in the **Federal Register** on June 9, 1998 (63 FR 31406). No comments were received from the public on the IRFA; however, written comments were received from the Small Business Administration (SBA) on the IRFA. The FRFA expands the IRFA and responds to comments by SBA.

The final rule applies to a maximum of 12 NWHI lobster fishery limited access permit holders who are small business entities. The ex-vessel revenue of a permit holder, based on a prototypical NWHI lobster vessel, is approximately $208,000 based on current operating patterns. Lobster vessel captains are required to maintain and submit, after each trip, logsheets containing daily lobster catch and effort information associated with their fishing and, if needed, information on interactions with protected species. While at sea, they must also provide to NMFS daily reports of their catch and lobster fishing effort. A report indicating the ex-vessel revenues obtained from the catch sold must be submitted to NMFS. All lobster fishermen are subject to the same requirement; no special professional skills are needed to identify the species of lobster caught, to record catch and effort, or to submit written or oral reports, as required.

The FRFA analyzes three alternatives for utilizing harvest guidelines in the 1998 fishery. It provides quantitative information for the analyses of the preferred alternative (bank-specific harvest guidelines for four lobster grounds) and two alternative actions (no action and full bank-specific guidelines). The FRFA is based on several assumptions, the validity of which will be tested under the final rule. For example, it is assumed that vessels will move only once to another fishing ground when a harvest guideline is reached, and then return to port; it is assumed that ‘‘other remaining NWHI banks’’, which have not been fished since the early 1990s, will have the same catch-per-unit-effort as at the traditional fishing grounds (Necker Island, Gardner Pinnacles, Maro Reef); it is assumed that market prices for live lobsters and frozen tails are the same as during the previous season; and finally, it is assumed that vessels participating in the 1998 fishery will operate in the same manner as vessels that fished in 1997. For purposes of the FRFA, a ‘‘trip’’ refers to the period of time from when a fishing vessel leaves port until it lands its catch. It is expected that most vessels in this fishery will make one trip during the lobster season.

The expanded analysis in the FRFA shows the relative effect of the three alternatives in a static, prototypical income statement approach (data in the Appendices are shown on a typical single vessel basis). The following percentages reflect the difference between the Preferred Alternative or Full-Bank Alternative and the No Action Alternative. These percentages were calculated using revenue and cost data contained in Appendices A1, A2, and A3 to the FRFA and are summarized in Appendix B. The Preferred Alternative is expected to increase shared operating costs (i.e., all operating costs except crew share and captain’s bonus) per trip by roughly 2 percent ($775) and total costs by about 0.3 percent ($469). Net revenue per trip is projected to decrease by approximately 1.8 percent ($470), assuming an increase of two non-fishing days per trip as the fishing vessels are forced to move between the banks/areas as a result of meeting the harvest guideline for any individual bank. No change is expected in annual gross revenue per vessel between the Preferred and No Action Alternatives.

The harvest guideline under the Full-Bank Alternative (i.e., the sum of the specific harvest guidelines for each of 11 lobster grounds where exploitable population estimates are available), which was developed prior to the determination of the 1998 harvest guideline, would be about 6 percent lower than under the No Action Alternative. Therefore, under the Preferred Alternative, *fleet-wide* gross revenue from the lobster fishery would also be roughly 6 percent lower under the Full-Bank Alternative. This could result in an equivalent decrease in annual gross revenue per vessel under the Full-Bank Alternative. Under the Full-Bank Alternative, the lower harvest guideline could be met by vessels taking shorter or fewer trips, and as a result, those vessels would be able to go into another fishery (e.g., NWHI bottomfish or distant-water pelagic longline) earlier, and thus make up a portion of the decreased gross revenue.

The three alternatives are not expected to affect different sizes of vessels or companies in a differential manner. Compliance costs (shared operating costs) as a percent of total revenue under the Preferred Alternative are expected to increase about 0.4 percent ($775/trip) compared to the No Action Alternative, and approximately 0.8 percent ($1,124/trip) under the Full-Bank Alternative.

The economic analysis in the FRFA is based on some reasonable assumptions, however, the actual impacts are impossible to calculate. Based on the expanded analysis of the FRFA, this action is not projected to have a significant economic impact on a substantial number of small entities. Of course, the entire program is tailored after considering the possible negative impacts and weighing those against the possible benefits. On balance, the potential benefits seem to outweigh the potential costs. Therefore, at this time, the agency has not taken any steps to minimize impacts. This final rule action is for 1998 only and this agency will monitor its impacts. If necessary and appropriate, NMFS will consider whether minimizing steps are appropriate in future actions of this type for this fishery.

Under 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NMFS, finds good cause to waive the 30-day delay in effectiveness for this rule. In order to ensure the health of the lobster stocks this fishing season, the rule must be in effect as soon as possible; the fishing season started July 1. The allocation of the harvest guidelines themselves does not require action by any fisherman; rather it determines when the Southwest Regional Administrator, NMFS, must close an allocated area. All participants have actual notice of this rule. Therefore, delaying this rule would be contrary to the public interest and unnecessary.

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

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: July 23, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660 - FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. Section 660.12 is amended by adding a definition of ''lobster grounds'', in alphabetical order, to read as follows:

§ 660.12 Definitions.

* * * * *

Lobster grounds refers, singularly or collectively, to the following four areas in Crustaceans Permit Area 1 that shall be used to manage the 1998 lobster fishery:

(1) *Necker Island Lobster Grounds*—waters bounded by straight lines connecting the following coordinates in the order presented: 24°00′ N. lat., 165°00′ W. long.; 24° 00′ N. lat., 164° 00′ W. long.; 23° 00′ N. lat., 164° 00′ W. long.; and 23° 00′ N. lat., 165° 00′ W. long.

(2) *Gardner Pinnacles Lobster Grounds*— waters bounded by straight lines connecting the following coordinates in the order presented: 25° 20′ N. lat., 168° 20′ W. long.; 25° 20′ N. lat., 167° 40′ W. long.; 24° 20′ N. lat., 167° 40′ W. long.; and 24° 20′ N. lat., 168° 20′ W. long.

(3) *Maro Reef Lobster Grounds*—waters bounded by straight lines connecting the following coordinates in the order presented: 25° 40′ N. lat., 171° 00′ W. long.; 25° 40′ N. lat., 170° 20′ W. long.; 25° 00′ N. lat., 170° 20′ W. long.; and 25° 00′ N. lat., 171° 00′ W. long.

(4) *General NWHI Lobster Grounds*—all waters within Crustaceans Permit Area 1 except for the Necker Island, Gardner Pinnacles, and Maro Reef Lobster Grounds.

* * * * *

3. Section 660.42 is amended by adding new paragraphs (a)(1)(vi) and (a)(13), to read as follows:

§ 660.42 Prohibitions.

* * * * *

(a) * * *

(1) * * *

(vi) In a lobster grounds after closure of that grounds as specified in § 660.50(b).

* * * * *

(13) Possess, on a fishing vessel that has a limited access permit issued under this subpart, any lobster trap in a lobster grounds that is closed under § 660.50(b), unless the vessel is operating a VMS unit certified by NMFS.

* * * * *

4. Section 660.48 is amended by suspending paragraph (a)(7) and adding a new paragraph (a)(10), to read as follows:

§ 660.48 Gear restrictions.

(a) * * *

(10) A vessel whose owner has a limited access permit issued under this subpart and has an operating VMS unit certified by NMFS may transit the Crustaceans Permit Area 1, including the Crustaceans Permit Area 1 VMS Subarea, with lobster traps on board for the purpose of moving to another lobster grounds or returning to port following the closure date, as specified in § 660.50, providing the vessel does not stop or fish and is making steady progress to another lobster grounds or back to port as determined by NMFS.

* * * * *

5. Section 660.50 is amended by suspending paragraph (b)(4) and adding new paragraphs (b)(5) through (b)(8) to read as follows:

§ 660.50 Harvest limitation program.

* * * * *

(b) * * *

(5) For the 1998 fishing season, the following harvest guidelines apply to the four lobster grounds in Crustaceans Permit Area 1:

(i) No more than 70,000 lobsters may be harvested from the Necker Island Lobster Grounds;

(ii) No more than 20,000 lobsters may be harvested from the Gardner Pinnacles Lobster Grounds;

(iii) No more than 80,000 lobsters may be harvested from the Maro Reef Lobster Grounds; and

(iv) No more than 116,000 lobsters may be harvested from the General NWHI Lobster Grounds.

(6) The Regional Administrator, Southwest Region, NMFS, shall determine, on the basis of the information reported to NMFS by the operator of each vessel fishing, when the harvest guideline for each lobster grounds will be reached.

(7) Notice of the date when the harvest guideline for a lobster grounds is expected to be reached, and specification of the closure date of the lobster grounds, will be provided to each permit holder and/or operator of each permitted vessel at least 24 hours in advance of the closure. After a closure, the harvest of lobster in that

lobster grounds is prohibited, and the possession of lobster traps on board the vessel in the lobster grounds is prohibited unless allowed under § 660.48(a)(10).

(8) With respect to the notifications in paragraphs (b)(3) and (b)(7) of this section, NMFS shall provide each permit holder and operator of each permitted vessel with the following information, as appropriate:

(i) Determination of when the over-all harvest guideline for Crustaceans Permit Area 1 will be reached;

(ii) Closure date after which harvest of lobster or possession of lobster traps on board the vessel in a lobster grounds is prohibited;

(iii) Closure date after which the possession of lobster traps on board the vessel in Crustaceans Permit Area 1 is prohibited by any permitted vessel that is not operating a VMS unit certified by NMFS; and

(iv) Specification of when further landings of lobster will be prohibited by permitted vessels not using VMS units certified by NMFS.

* * * * *

[FR Doc. 98–20196 Filed 7–23–98; 4:58 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 63, No. 145

Wednesday, July 29, 1998

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 309, 310, 381, and 417

[Docket No. 98–039N]

HACCP-Based Meat and Poultry Inspection Concepts: In-Plant Slaughter Inspection Models Study Plan

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is making available for comment a paper describing the plan for evaluating new livestock and poultry slaughter inspection models in certain establishments operating under Hazard Analysis and Critical Control Point (HACCP) systems. The paper was prepared for use by establishments slaughtering certain market classes of animals and participating in the Agency's HACCP-Based Inspection Models project and by the FSIS project team. During this project, FSIS will test and evaluate new approaches to fulfilling inspection requirements by plants and FSIS inspectors. The project will also test new FSIS food safety and other consumer protection activities in transportation and distribution channels. The new models are intended to help the Agency determine how best to maintain and improve upon the level of protection provided by current inspection procedures, and at the same time use its resources more effectively. The paper outlines the approaches that will be used by the participating establishments and by the FSIS inspectors assigned to these plants. The paper also describes the organoleptic and microbiological evaluations to be conducted by the FSIS project team.

DATES: To receive full consideration, comments should be received by September 28, 1998.

ADDRESSES: The document ''HACCP-Based Inspection Models Project: In-plant Slaughter'' may be viewed in the FSIS Docket Room, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700. An electronic version of the document is available on-line at FSIS's homepage at ''http://www.fsis.usda.gov.'' Written comments on the document may be sent in triplicate to FSIS Docket Clerk, DOCKET #98-XXXN, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Background

FSIS is conducting a project to develop and test new models for the inspection of certain meat and poultry products produced under the Agency's ''Pathogen Reduction; Hazard Analysis and Critical Control Point Systems'' (PR/HACCP) final rule (61 FR 38806; July 25, 1996). FSIS will also test a new in-distribution inspection concept; however, the paper described here only concerns the inplant slaughter phase of the project. The inspection models project was announced in a June 10, 1997, **Federal Register** notice, ''HACCP-Based Meat and Poultry Inspection Concepts,'' requesting public comments on the design and development of new inspection models for slaughter and processing under HACCP systems of young, healthy, uniform animals (62 FR 31553). The project has been a subject of discussion at several public meetings during the past year.

The HACCP-Based Inspection Models project is intended to produce a flexible, more efficient, fully integrated system of oversight and controls. FSIS expects this system of establishment controls and Agency oversight and verification, to yield increased food-safety and other benefits to consumers. The new system should enable certain establishments to better meet their responsibilities under the PR/HACCP regulations and permit FSIS to deploy its inspection resources more effectively both in-plant and in-distribution.

In the inspection models for selected market classes that FSIS is developing, slaughter process control will be an industry responsibility subject to FSIS oversight and verification. The models, when refined, should enable FSIS to: (1) maintain and enhance the food-safety and other consumer protection benefits of the current carcass inspection system; (2) effectively and efficiently oversee, evaluate, and verify industry implementation of the PR/HACCP regulations; and (3) ensure that meat and poultry products are transported and distributed under conditions that will not render them adulterated. The project will thoroughly test the Agency's ability to achieve these objectives using the new models in certain market classes of livestock and birds.

Establishments participating in the project will carry out food-safety-related and other consumer protection activities. Establishment employees will conduct anatomical and pathological examinations of carcasses, and FSIS inspectors will oversee, evaluate, and verify the effectiveness and reliability of the establishments' slaughter process controls.

The paper ''HACCP-Based Inspection Models Project: Inplant Slaughter'' outlines the establishment process-control responsibilities and FSIS inspection activities to be carried out during the in-plant phase of the project, and describes the microbial and organoleptic evaluation procedures which the project team will carry out.

Done, at Washington, D.C., July 22, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–20173 Filed 7–28–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 309, 310, 381, and 417

[Docket No. 98–009N]

HACCP-Based Meat and Poultry Inspection Concepts: Diseases and Conditions Identifiable During Post-Mortem Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is making available for comment a paper that lists two categories of livestock and poultry diseases and conditions observed at post-mortem inspection. One category is comprised of diseases and conditions that the Agency believes pose food safety risks or hazards. The other category is comprised of diseases and conditions that present other consumer protection issues. FSIS has developed the list as part of its HACCP-Based Inspection Models Project.

DATES: To receive full consideration, comments should be received by September 28, 1998.

ADDRESSES: The document ''HACCP-Based Inspection Models Project: Diseases and Conditions Observable in Meat and Poultry'' may be viewed at the FSIS Docket Room, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700. An electronic version of the document is available on-line at FSIS's homepage at http://www.fsis.usda.gov. Written comments on the document may be sent in triplicate to FSIS Docket Clerk, DOCKET #98–009N, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Background

FSIS is carrying out a project to develop and test new methods for the inspection during slaughter of certain market classes of animals and their meat and poultry products produced under the Agency's ''Pathogen Reduction; Hazard Analysis and Critical Control Point Systems'' (PR/HACCP) final rule (61 FR 38806; July 25, 1996). This project is designed to develop, in plants, these approaches to slaughtering inspection of young, healthy and uniform animals and birds that are consistent with the HACCP/PR regulation, and to explore the possibility of redeployment of some inspection resources from these plants in ways that will enhance food safety protection all along the farm-to-table continuum. It will also help define the respective responsibilities of FSIS and the regulated industry in slaughter and processing establishments, and in distribution channels outside of inspected establishments.

In a June 10, 1997, **Federal Register** notice, ''HACCP-Based Meat and Poultry Inspection Concepts,'' FSIS requested public comment on the design and development of new inspection models for slaughter and processing in a Hazard Analysis and Critical Control Point (HACCP) environment (62 FR 31553). This notice summarized the National Academy of Sciences and General Accounting Office's recommendations that FSIS reduce its reliance on organoleptic (sensory) inspection and redeploy its resources to utilize regulatory approaches that are based on risks. To accomplish these objectives, new inspection models or methods must be developed, and these must be consistent with the meat and poultry inspection laws as well as systems put in place by the PR/HACCP final rule.

A June 24–25, 1997, public meeting, which the notice announced, provided a forum for dialogue between FSIS and all parties interested in the project. This project has also been discussed at the September 9–11, 1997, January 13–14, 1998, and May 12–14, 1998, meetings of the National Advisory Committee on Meat and Poultry Inspection. It will also be discussed at FSIS' July 27 public meeting on its HACCP-based Inspection Models Project for Slaughtering establishments.

Diseases and Conditions that Pose Food Safety Risks vs. Ones That Pose Other Consumer Protection Issues

As part of the development of new inspection models or methods that are consistent with the meat and poultry inspection laws and with systems put in place by the PR/HACCP final rule, animal diseases and conditions observable at post-mortem inspection that pose food-safety hazards or risks need to be distinguished from diseases and conditions that present other consumer protection issues. In the past, the Agency has not made this distinction because, under the traditional approach to inspection, resources are not assigned according to public-health risk.

HACCP, however, focuses on hazards. The diseases and conditions listed in the paper are examples of potential hazards that, in the future, establishments might consider when conducting their hazard analyses and in developing their HACCP plans or, with respect to the non-food-safety-related conditions, in developing slaughter process control programs.

The first category of diseases and conditions listed in the paper is comprised of diseases and conditions that pose food-safety hazards or risks (within the meaning of 9 CFR 417.1 and 417.2(a)); the second is comprised of animal diseases and conditions that pose other consumer protection issues. Meat and poultry products affected by diseases and conditions in either category are to be removed from the human food supply in the interests of consumers, because diseases and conditions in either category would adulterate the food.

Because FSIS has not previously delineated these categories, and because establishments are not now expected to have categorized diseases and conditions in this manner, FSIS determined that it would be useful to have a broad base of comments on the list. The list was developed by Agency experts based, in part, on informal consultations with their colleagues outside the Agency and the Government.

In the course of the HACCP-Based Inspection Models project, the volunteer establishments will decide how best to remove adulterated carcasses and parts from the food supply, and FSIS will decide how best to verify that only safe, wholesome products are entering commerce. These decisions will depend, in part, on knowing which diseases and conditions affect food safety (controlled by HACCP systems) and which are aesthetic conditions (but are subject to slaughter process controls). The paper, ''HACCP-Based Inspection Models Project: Diseases and Conditions to be Removed from Meat and Poultry'' is intended to inform project participants and the public of the Agency's views on this subject. The paper is available for review at the location indicated above in **ADDRESSES**.

Done at Washington, DC, on: July 22, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–20172 Filed 7–28–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

Existence of Proposed Airworthiness Design Standards for Acceptance Under the Primary Category Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed airworthiness standards for acceptance under the primary category rule; request for comments.

SUMMARY: This document announces the existence of and requests comments on proposed airworthiness design standards for acceptance of the Model Deland Travelaire airplane under FAA's rules on designation of applicable regulations for primary category aircraft.

DATES: Comments must be received on or before August 28, 1998.

ADDRESSES: Send all comments to the FAA, Standards Office, Small Airplane Directorate (ACE–110), Aircraft Certification Service, 601 East 12th Street, Kansas City, MO 64106.

FOR FURTHER INFORMATION CONTACT: Tim Smyth, Aerospace Engineer, Standards Office (ACE–111), Small Airplane Directorate, Aircraft Certification Service, FAA; telephone number (816) 426–6941, fax number (816) 426–2169.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this information by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.**

Comments Invited

We invite interested parties to submit comments on the proposed airworthiness standards to the address specified above. Commenters must identify the design standards (Department of Commerce Aeronautics Bulletin 7A, as amended October 1, 1934, as the design standard for the unmodified airplane structure and Transport Canada's TP10141E Ultralight (Sportplane) design standard for all modifications) and submit comments to the address specified above. The FAA will consider all communications received on or before the closing date before issuing the final acceptance. The proposed airworthiness design standards and comments received may be inspected at the FAA, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE–110), 1201 Walnut, Room 900, Kansas City, MO 64106, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

The ''primary'' category for aircraft was created specifically for the simple, low performance personal aircraft. Section 21.17(f) provides a means for applicants to propose airworthiness standards for their particular primary category aircraft. The FAA procedure establishing appropriate airworthiness standards includes reviewing and possibly revising the applicant's proposal, publication of the submittal in the **Federal Register** for public review and comment, and addressing the comments. After all necessary revisions, the standards are published as approved FAA airworthiness standards.

Accordingly, the applicant, Orlando Helicopter Airways, Inc., has submitted a request to the FAA to include the Department of Commerce Aeronautics Bulletin 7A, as amended October 1, 1934, as the design standard for the unmodified airplane structure and Transport Canada's TP10141E Ultralight (Sportplane) design standard for all modifications. The Department of Commerce Aeronautics Bulletin 7A was used in the original certification in March 1928 of the Curtiss Travel Aire 2000; therefore, the FAA considers this standard as continuing to be valid for the unmodified parts of the Deland Travelaire.

The authority citation for the proposed airworthiness standards is as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

Proposed Airworthiness Standards for Acceptance Under the Primary Category Rule

The FAA is requiring 500 hours of operational aviation service history of the derivative V8 engine/wood-propeller combination on an airplane rather than the 200 hours offered by the applicant. The applicant has agreed to this position; therefore, the certification basis for the Deland Travelaire will be the Primary Category Rule (part 21, 21.24) with Department of Commerce Aeronautics Bulletin 7A, as amended October 1, 1934, as the design standard of the unmodified airplane structure and Transport Canada's TP10141E Ultralight (Sportplane) Design Standard will be used for all modifications.

Compliance with the acoustical standards of the latest amendment to 14 CFR part 36 at the time of certification will be required.

Issued in Kansas City, Missouri, on July 8, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–20112 Filed 7–28–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–110332–98]

RIN 1545–AW43

Conversion to the Euro

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the change to the euro. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written comments must be received by October 1, 1998. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for October 20, at 10 a.m., must be received by September 29, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–110332–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–110332–98) Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax__regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Howard Wiener, (202) 622–3870 or Thomas Preston, (202) 622–3930; concerning submissions and the hearing, LaNita VanDyke, 202–622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to sections 985 and 1001. The temporary regulations contain rules relating to conversion to the euro.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Request for Additional Comments

The Treasury and IRS request additional comments on the following issues.

(1) Whether the final regulations should contain guidance (and the substance of any such guidance) concerning the application of sections 1092 and 1259. Comments should separately address the rules for periods before May 3, 1998, between May 3, 1998 and December 31, 1998, and after December 31, 1998.

(2) Whether guidance is necessary with respect to section 905, relating to the redetermination of taxes in post-conversion years.

(3) Whether a QBU whose functional currency was a currency other than a legacy currency, but whose functional currency should properly be the euro after the conversion, should be deemed to have automatically changed its functional currency to the euro.

(4) Whether the regulations adequately address QBUs with functional currencies of countries that adopt the euro in the future. The Treasury and IRS also request comments regarding guidance clarifying the treatment of section 988 transactions that are held by euro functional currency QBUs and that are denominated in a currency that is replaced by the euro in the future.

(5) Whether guidance is necessary to address integrated section 988 hedging transactions. It is intended that these regulations be applied to section 988 integrated hedging transactions under section 988(d) on an integrated basis. If a QBU subsequently legs out of a position of a section 988 integrated hedging transaction after the euro conversion, a leg that formerly was a legacy currency position prior to the conversion will be a euro denominated position after the conversion, and the section 988 rules should then be applied to the euro denominated position.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analyses is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, October 20, 1998, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by October 1, 1998, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 29, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Howard A. Wiener, of the Office of Associate Chief Counsel (International) and Thomas Preston of the Office of Associate Chief Counsel (Domestic). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.985–8 is added to read as follows:

§ 1.985–8 Special rules applicable to the European Monetary Union (conversion to the euro).

[The text of this proposed section is the same as the text of § 1.985–8T published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 1.1001–5 is added to read as follows:

§ 1.1001–5 European Monetary Union (conversion to the euro).

[The text of this proposed section is the same as the text of § 1.1001–5T published elsewhere in this issue of the **Federal Register**.]

Michael P. Dolan,

Deputy Commissioner of Internal Revenue Service.

[FR Doc. 98–20024 Filed 7–28–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[WY–028–FOR]

Wyoming Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Wyoming regulatory program (hereinafter, the ''Wyoming program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to rules and statutes pertaining to: fish and wildlife habitat and resource information, shrub density, certification of maps by a registered professional engineer, geologic descriptions, topsoil substitutes, special bituminous coal mines, archaeological and historic resources, permit transfers, civil penalties, and miscellaneous changes to Appendix A, which concerns vegetation sampling methods and reclamation success standards for surface coal

mining operations. The amendment is intended to revise the Wyoming program to be consistent with the corresponding Federal regulations, to clarify ambiguities, and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t. August 28, 1998. If requested, a public hearing on the proposed amendment will be held on August 24, 1998. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on August 13, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Wyoming program, the proposed amendment, 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 Casper Field Office.

Guy Padgett, Field Office Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East ''B'' Street, Federal Building, Room 2128, Casper, Wyoming 82601–1918

Rick Chancellor, Administrator, Land Quality Division, Department of Environmental Quality, Herschler Building—3rd Floor West, 122 West 25th Street, Cheyenne, Wyoming 82002, Telephone: 307–777–7046.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, 307/261–6550; Internet: GPADGETT@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, and 950.16.

II. Proposed Amendment

By letter dated July 13, 1998, Wyoming submitted a proposed amendment (administrative record No. WY–32–1) to its program pursuant to SMCRA, 30 U.S.C. 1201 *et seq.* Wyoming submitted the proposed amendment in response to the required program amendments at 30 CFR 950.16 (b), (c), (g), (v), (x), (ii)(1), and (kk), and at its own initiative. The provisions of the Wyoming Coal Rules and Regulations that Wyoming proposed to revise were: (1) Chapter 1, section 2(ac), revises the definition of ''eligible land'' in the definitions section by adding the exact date of approval of the shrub density rule, August 6, 1996; (2) Chapter 2, Section 1(e), revises the section delineating the contents of permit applications by deleting reference to the defunct State Conservation Commission; (3) Chapter 2, Section 2(a)(vi)(G)(II), requires notification of the U.S. Fish and Wildlife Service by the Wyoming Administrator of the Land Quality Division if critical or crucial habitat disruption is likely; (4) Chapter 2, Section 2(a)(vi)(H), requires in the permit application a description of the areal and structural geology of the permit area and, by extrapolation, adjacent areas; (5) Chapter 2, Section 2(a)(vi)(J), corrects incorrect references to the Wyoming Statutes; (6) Chapter 2, Section 2(a)(vi)(J)(II), requires maps submitted in a permit application to depict the strike and dips of coal seams; (7) Chapter 2, Section 2(b)(iv)(C) revises the subsection on revegetation by deleting reference to the defunct State Conservation Commission; (8) Chapter 2, Section 2(b)(vi)(C), requires the submission of resource information when requested by the U.S. Fish and Wildlife Service; (9) Chapter 4, Section 2(c)(ix), allows the use of selected spoil material as a topsoil or subsoil substitute; (10) Chapter 4, Section 2(d)(x)(E)(I), revises the rule on shrub density to add the exact date of the approval of the rule, August 6, 1996; (11) Chapter 4, Section 2(d)(x)(E)(III), revises the rule to be consistent with the Wyoming Statute because the rule did not clarify that the Wyoming Game and Fish Department only has approval authority for revegetation standards on crucial habitat declared as such prior to the submittal of a permit application or any subsequent amendment; (12) Chapter 8, Section 3–4, revises the rules on special bituminous coal mines by establishing special alternative standards for new special bituminous surface coal mines; (13) Chapter 12, Section 1(a)(v)(B), requires that the effect on properties on the National Register of Historic Places must be taken into account prior to permit approval; (14) Chapter 12, Section 1(a)(v)(C), revises the rule on permitting procedures by adding the word, ''any'' in front of ''properties listed or eligible for listing on the National Register of Historic Places''; (15) Chapter 12, Section 1(b)(ii), revises the rule on permitting procedures by deleting, for permit transfers, the reference to the public participation requirements in Wyoming Statute 35–11–406(g); (16) Chapter 16, Section 3 (c) and (f), corrects the reference to the Wyoming Statute concerning civil penalties; (17) Appendix A, Appendix IV, revises the rules by adding additional plants to the List of Threatened and Endangered Species in Wyoming; (18) Appendix A, Options I–IV, makes 11 minor changes to the shrub density option tables; (19) Appendix A, Section II.C.2.c, corrects the cross-reference to the rule on cropland, hayland or pastureland; (20) Appendix A, Section II.C.3, removes the language referring to the approval of the shrub density rule and replaces it with the exact date of approval of that rule, August 6, 1996; (21) Appendix A, section VIII.E, removes the language referring to the approval of the shrub density rule with the exact date of the approval of that rule, August 6, 1996.

III. Public Comment Procedures

In accordance with 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 Wyoming program.

1. 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 Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearings

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on August 13, 1998. 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**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify 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 testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been hear.

3. Public Meeting

If only one person requests an opportunity to testify 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 contracting 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

1. Executive Order 12866

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

2. Executive Order 12988

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

3. National Environmental Policy Act

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

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

6. Unfunded Mandates

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

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 22, 1998.

Peter A. Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 98–20262 Filed 7–28–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[CO–001–0026b; FRL–6131–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Colorado; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the Colorado plan and associated regulations for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines at 40 CFR part 60, subpart Cc, which were required pursuant to section 111(d) of the Clean Air Act (Act). The State's plan, which was submitted to EPA on April 13, 1998, establishes performance standards for existing MSW landfills and provides for the implementation and enforcement of those standards.

In the Final Rules section of this **Federal Register**, the EPA is approving the State's submittal in a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments must be received in writing on or before August 28, 1998.

ADDRESSES: Written comments on this action may be mailed to Vicki Stamper, 8P2–A, at the EPA Regional VIII Office listed. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this proposed rule are available for public inspection at the Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Dated: July 20, 1998.

William P. Yellowtail,

Regional Administrator, Region VIII.

[FR Doc. 98–20283 Filed 7–28–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 503

[Docket No. 98–11]

Availability of Records to the Public—Electronic Freedom of Information Act; Correction

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking; correction.

SUMMARY: This document corrects proposed § 503.23(a)(3) in a proposed rule published in the **Federal Register** on July 22, 1998, regarding Availability of Records to the Public—Electronic Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, 202–523–5725.

Correction

In the proposed rule FR Doc. 98–19432, beginning on page 39263 in the issue of July 22, 1998, make the following correction in the rule text. On page 39265 in the first column, § 503.23, paragraph (a)(3), correct ''§§ 514.20(c) or 514.8(k)'' to read ''§§ 514.21(d) or 514.8(k)(2).''

Dated: July 23, 1998.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 98–20215 Filed 7–28–98; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 389

[FHWA Docket No. FHWA–98–4145]

Federal Motor Carrier Safety Regulations; Waivers, Exemptions, and Pilot Programs; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Announcement of meeting.

SUMMARY: The FHWA is announcing a public meeting to solicit information that will assist the agency in implementing section 4007 of the Transportation Equity Act for the 21st Century (TEA 21), effective on June 9, 1998, governing waivers, exemptions, and pilot programs. Section 4007 amended 49 U.S.C. 31315 and 31136(e) by changing the agency's authority to grant waivers and exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs) and to conduct pilot programs. The new statutory language requires the FHWA, within 180 days of enactment of TEA 21, to establish procedures by which a person may request a waiver or an exemption.

The FHWA recognizes the public's interest in how the agency applies its waiver and exemption authority. For that reason, we are scheduling a public meeting to obtain comments and ideas from interested persons to assist the FHWA in implementing section 4007 expeditiously.

DATES: The public meeting will be held on Thursday, August 20, 1998, between 9 a.m. and 4 p.m. Comments for inclusion in the docket must be received no later than August 20, 1998.

ADDRESSES: The public meeting will be held in Room 2230 of the DOT Headquarters Building, 400 Seventh Street, SW., Washington, DC. Written, signed comments to the docket identified at the beginning of this document should be sent to: Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Persons desiring notification of receipt of comments must enclose a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT:

General Information. To request time to be heard and for other general information, contact Dianne Porter, Office of Motor Carrier Planning and Customer Liaison, (202) 366–4073.

Specific Rulemaking Information. For information concerning rulemaking, contact Neill L. Thomas, Office of Motor Carrier Research and Standards, (202) 366–4009 or Charles E. Medalen, Office of Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

An electronic copy of this document may be downloaded using a computer, modem, and suitable communications software from the Government Printing Office (GPO) electronic bulletin board service (telephone: 202–512–1661). Internet users may reach the GPO's web page at: http://www.access.gpo.gov/su—docs/aces/aaces002.html.

Participation and Attendance

All persons who would like to participate in the public meeting must notify the agency by contacting Dianne Porter by telephone at (202) 366–4073; E-Mail: dporter@fhwa.dot.gov; or FAX: (202) 366–7298 by 4 p.m., e.t., on Friday, August 14, 1998. All persons attending will be subject to Federal and DOT workplace security measures. Attendees must enter the building at the southwest quadrant which is located near the intersection of Seventh and ''E'' Streets, SW.

Background

The Motor Carrier Act of 1935 gave the FHWA and its predecessor, the Interstate Commerce Commission (ICC), broad authority to regulate qualifications and maximum hours of service of employees of, and safety of operation and equipment of motor carriers (now recodified at 49 U.S.C. 31502), which carried with it implicit authority to waive any regulation or exempt any entity.

Before TEA 21 (Pub. L. No. 105–178, 112 Stat. 107), the Motor Carrier Safety Act of 1984 (49 U.S.C. 31136) and the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31315) provided the FHWA explicit authority to waive any part of a regulation, as it applies to a person or a class of persons, if the action taken was first determined to be consistent with the public interest and the safe operation of commercial motor vehicles. Before granting a waiver under these provisions of law, the FHWA had to publish the proposed waiver and the reasons for it in the **Federal Register** for public comment. This was a considerable limitation on the implicit authority in the 1935 Act inherited from the ICC in 1967 and presented a difficult test as interpreted by the U.S. Court of Appeals for the D.C. Circuit in *AHAS* v. *FHWA*, 28 F. 3d 1288 (1994).

With the enactment of TEA 21, the FHWA may grant a waiver or exemption that relieves a person from compliance in whole or in part with a regulation if the FHWA determines that such a waiver or exemption is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved absent such a waiver or exemption. The TEA 21 makes a clear distinction between ''waivers'' and ''exemptions.'' It also requires the agency to establish procedures for considering requests for exemptions. We will be developing procedures consistent with section 4007.

Waivers

The new provision gives the FHWA the authority to grant short-term waivers without public notice and comment. In addition to the safety criterion that applies to both waivers and exemptions, waivers will require a ''public interest'' finding. These waivers will only be granted to particular persons or groups for specific purposes for periods up to 3 months. The FHWA is interested in receiving comments on how this new authority should be exercised.

Exemptions

This exemption provision is intended to broaden the agency's discretion to grant exemptions by overcoming the strict interpretation in *AHAS* v. *FHWA*, supra. As expressed in the legislative history of section 4007 of TEA 21:

> The Court found that the statutory language (49 U.S.C. 31136(e)) required the Secretary to determine, before issuing any waiver, that no diminution in safety would result, i.e., that it be determined beforehand there would be absolutely no increase in crashes as a result of the waivers. To deal with the decision, this section substitutes the term ''equivalent'' to describe a reasonable expectation that safety will not be compromised. In the absence of greater discretion to deal with waivers and exemptions and a new standard by which to judge them, the Congress would continue to be the only source to provide regulatory exemptions.

H.R. Conf. Rep. No. 105–550, at 489–490 (1998)

Generally, exemptions issued under this authority may be granted for only 2 years from date of approval, but are renewable. The agency has the authority to immediately revoke an exemption if—

(1) The person fails to comply with the terms and conditions of such exemption;

(2) The exemption has resulted in a lower level of safety than was maintained before the exemption was granted; or

(3) Continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. chapter 311, Commercial Motor Vehicle Safety, or 49 U.S.C. 31136, as the case may be.

Within 180 days of enactment of section 4007 and after notice and comment rulemaking, the FHWA must specify, by regulation, the procedures by which a person may request an exemption. Such regulations, at a minimum, must require a person to submit the following information with each exemption request:

(1) The provisions from which the person requests exemption;

(2) The time period during which the requested exemption would apply;

(3) An analysis of the safety impacts the requested exemption would cause; and

(4) The specific countermeasures the person would undertake to ensure an equivalent or greater level of safety than would be achieved absent the requested exemption.

In addition to the above requirements, each request for exemption, each exemption granted, and each denial must be published in the **Federal Register** and explain the rationale for the action taken.

Before granting a request for exemption, the FHWA must notify State safety compliance and enforcement personnel, including roadside inspectors, and the public that a person will be operating pursuant to an exemption and any terms and conditions that will apply to the exemption.

Pilot Programs

Section 4007 of TEA 21 also permits the FHWA to conduct pilot programs to evaluate alternatives to regulations relating to, or innovative approaches to, motor carrier, commercial motor vehicle, and driver safety. Such programs may include exemptions from a current safety regulation. Before the agency may initiate a pilot program and before granting exemptions for purposes of the pilot program, the FHWA must ensure that the safety measures in the project are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would otherwise be achieved through compliance with the current safety regulations. The FHWA must also publish, in the **Federal Register**, a detailed description of each pilot program, including the exemptions to be considered, and provide notice and an opportunity for public comment before the effective date of the program.

Public Meeting

The FHWA recognizes the public's interest in how the agency applies its waiver and exemption authority and conducts its pilot programs and wants to expedite the promulgation of the procedural rules. For that reason, we are scheduling a public meeting to obtain the comments and ideas from interested persons to assist the agency in implementing section 4007 expeditiously. The meeting will be held on Thursday, August 20, 1998, in Room 2230 of the DOT Headquarters building located at 400 Seventh Street, SW., Washington, DC. Each presentation will be limited to 20 minutes. Written comments will be accepted and placed in the public docket along with a transcript of the meeting. All docket comments and meeting transcripts will subsequently be available for review in the DOT Docket Room (Room PL–401, 400 Seventh Street, SW., Washington, DC) and on the internet (http://dms.dot.gov).

During the hearing we plan to discuss all relevant issues concerning the application, consideration, and issuance of waivers and exemptions, and conducting pilot programs. Issues to be discussed include, but are not limited to the following:

(1) What procedural rules should be developed? How detailed should they be?

(2) What conditions should be attached to a waiver or exemption?

(3) How should the waiver or exemption recipients be monitored? What criteria should be used?

(4) What should be the terms for renewal of a waiver or exemption?

(5) How should State compliance and enforcement personnel be notified?

Authority: 49 U.S.C. 31136, 31502; and 49 CFR 1.48.

Issued on: July 23, 1998.

Clinton O. Magby, II,

Acting Associate Administrator for Motor Carriers.

[FR Doc. 98–20228 Filed 7–28–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE89

Endangered and Threatened Wildlife and Plants; Extension of Comment Period and Notice of Public Hearing on Proposed Threatened Status for Rumex Orthoneurus (Chiricahua Dock)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period and notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that a public hearing will be held and the comment period extended on the proposed rule to list the plant *Rumex orthoneurus* (Chiricahua or Blumer's dock) as threatened. The hearing and the extension of the comment period will allow all interested parties to submit oral or written comments on the proposal.

DATES: The comment period for this proposal will be extended from July 30, 1998, to October 1, 1998. Comments must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on the proposal. The public hearing will be held from 7 p.m. to 9 p.m. on August 18, 1998, in Silver City, New Mexico.

ADDRESSES: The public hearing will be held at Light Hall Auditorium, Western New Mexico University, 1000 College Street, Silver City, New Mexico. Written comments should be sent to the State Supervisor, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Humphrey, at the above address, 602/640–2720.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) proposes to list *Rumex orthoneurus* (commonly known as Chiricahua or Blumer's dock) as threatened pursuant to the Endangered Species Act of 1973, as amended (Act). This plant is a rare Southwest endemic occurring within riparian and cienega (marshy wetland) habitats at elevations ranging from 1,950 to 2,763 m (6,398 to 9,065 ft). The plant is known from the Chiricahua, Pinaleno, Huachuca, Sierra Ancha, and White mountains in Arizona. In New Mexico, the plant is known from the Mogollon and San Francisco mountains. The plant is also believed to extend into northern New Mexico in the Pecos Wilderness and to have been extirpated from the Lincoln National Forest. A site in Mexico in the Sierra de los Ajos has also been reported. Habitat loss and degradation due to livestock grazing, recreation, water diversions and development, road construction and maintenance, and wildfire imperil the continued existence of this species. This proposal, if made final, would extend the Act's protection to this plant. A proposed rule to list this species as threatened was published in the **Federal Register** (63 FR 15813) on April 1, 1998.

Pursuant to 50 CFR 424.16(c)(2), the Service may extend or reopen a comment period upon finding that there is good cause to do so. Full participation of the affected public in the species listing process, allowing the Service to consider the best scientific and commercial data available in making a final determination on the proposed action, is deemed as sufficient cause.

Section 4(b)(5)(E) of the Act, as amended (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to four such requests, the Service will hold a public hearing on the date and at the address described above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to the Service at the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearings or mailed to the Service. Legal notices announcing the dates, times, and locations of the hearings will be published in newspapers concurrently with the **Federal Register** notice.

The current comment period on this proposal closes on July 30, 1998. In order to accommodate this public hearing, the Service extends the public comment period. Written comments may now be submitted until October 1, 1998, to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Jeffrey A. Humphrey (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

Dated: July 24, 1998.

Renne Lohoefener,

Acting Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. 98–20223 Filed 7–28–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 63, No. 145
Wednesday, July 29, 1998

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

DEPARTMENT OF AGRICULTURE

Forest Service

Kuakan Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to provide timber for the Stikine Area timber sale program. The Record of Decision will disclose how the Forest Service has decided to provide harvest units, roads, and associated timber harvesting facilities. The proposed action is to harvest up to an estimated 17 million board feet (mmbf) of timber on an estimated 800 acres in one or more timber sales. A range of alternatives responsive to significant issues will be developed and will include a no-action alternative. The proposed timber harvest is located within Tongass Forest Plan Value Comparison Unit 525 on Deer Island, Alaska, on the Wrangell Ranger District of the Stikine Area of the Tongass National Forest.

DATES: Comments concerning the scope of this project should be received by August 31, 1998.

ADDRESSES: Please send written comments to Wrangell Ranger District; Attn: Kuakan EIS; P.O. Box 51, Wrangell, AK 99929.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal and EIS should be directed to Randy Hojem, Team Leader, Wrangell Ranger District, Tongass National Forest, P.O. Box 51, Wrangell, AK 99929, telephone (907) 874–2323.

SUPPLEMENTARY INFORMATION: Public participation will be an integral component of the study process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, individuals and organizations that may be interested in, or affected by, the proposed activities. The scoping process will include: (1) identification of potential issues; (2) identification of issues to be analyzed in depth; and, (3) elimination of insignificant issues or those which have been covered by a previous environmental review. Written scoping comments are being solicited through a scoping package that will be sent to the project mailing list. For the Forest Service to best use the scoping input, comments should be received by August 31, 1998. Tentative issues identified for analysis in the EIS include the potential effects of the project on and the relationship of the project to: Old-growth ecosystem management and the maintenance of habitat for viable populations of wildlife and plant species, timber supply and sale economics, scenery and recreational resources, anadromous and resident fish habitat, soil and water resources, wetlands, subsistence resources, cultural resources and others.

Based on results of scoping and the resource capabilities within the project area, alternatives including a ‘‘no action’’ alternative will be developed for the Draft Environmental Impact Statement (Draft EIS). The Draft EIS is projected to be filed with the Environmental Protection Agency (EPA) in October 1998. The Final EIS is anticipated by May 1999.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553, (1978). Environmental objections that could have been raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping and comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provision of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Permits: Permits required for implementation include the following:

1. U.S. Army Corps of Engineers

—Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
—Approval of the construction of structure or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;

2. Environmental Protection Agency

—National Pollutant Discharge Elimination System (402) Permit;
—Review Spill Prevention Control and Countermeasure Plan;

3. State of Alaska, Department of Natural Resources

—Tideland Permit and Lease or Easement;

4. State of Alaska, Department of Environmental Conservation

—Solid Waste Disposal Permit;
—Certification of Compliance with Alaska Water Quality Standards (401 Certification)

Responsible Official: Carol J. Jorgensen, Assistant Forest Supervisor, Stikine Area, Tongass National Forest, P.O. Box 309, Petersburg, Alaska 99833, is the responsible official. The responsible official will consider the comments, response, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Dated: July 15, 1998.

Carol J. Jorgensen,

Assistant Forest Supervisor.

[FR Doc. 98–20185 Filed 7–28–98; 8:45 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: August 6, 1998.

PLACE: ARRB 600 E Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting.
2. Review of Assassination Records.
3. Other Business.

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Press Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

Laura Denk,

Executive Director.

[FR Doc. 98–20373 Filed 7–27–98; 1:02 pm]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–122–047]

Elemental Sulphur From Canada: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of the review of elemental sulphur from Canada. This review covers the period December 1, 1996 through November 30, 1997.

EFFECTIVE DATE: July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Rick Johnson at (202) 482–3818; Office of AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The 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).

Postponement of Preliminary Results

The Department has determined that it is not practicable to issue its preliminary results of the administrative review within the original time limit of September 2, 1998. (*See Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III to Robert LaRussa, Assistant Secretary for Import Administration,* July 9, 1998). The Department is extending the time limit for completion of the preliminary results until November 1, 1998 in accordance with Section 751(a)(3)(A) of the Act.

The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

Dated: July 14, 1998.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 98–20267 Filed 7–28–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–807]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Spain

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

EFFECTIVE DATE: July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Irene Darzenta, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5193 or (202) 482–6320, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Final Determination

We determine that stainless steel wire rod (SSWR) from Spain is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

The preliminary determination in this investigation was issued on February 25, 1998. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod from Spain,* 63 FR 10849 (March 5, 1998) *(Notice of Preliminary Determination).* Since the preliminary determination, the following events have occurred:

On March 6, 1998 the respondent in this investigation, Roldan, S.A. (Roldan), alleged that the Department of Commerce (the Department) made a ministerial error in calculating the margin for the preliminary determination. While we agreed with Roldan's allegation, in accordance with sections 351.224(e) and 351.224(g) of the Department's regulations, we did not amend our preliminary determination because the ministerial error was not significant. However, we have corrected this error in the final determination. For further discussion of the ministerial error, see the Memorandum from Howard Smith to Holly Kuga dated March 6, 1998.

In March 1998, we issued supplemental questionnaires to Roldan and received responses to those questionnaires. Roldan submitted corrected sales and cost databases in April 1998.

We verified Roldan's questionnaire responses in April and May 1998. At verification, Roldan identified various errors in its sales and cost databases, including incorrect payment dates for a significant number of U.S. sales and incorrect production quantities for all models listed in the cost databases. We requested that Roldan correct the erroneous U.S. payment dates and production quantities, and submit revised U.S. sales and cost databases. In response to our request, Roldan submitted revised cost data on May 8, 1998, and revised U.S. sales data on June 12, 1998. The revised U.S. sales database included updated U.S. credit expenses based on the corrected payment dates.

The petitioners (*i.e.*, AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., and the United Steel Workers of America, AFL–CIO/CLC) and Roldan submitted case briefs on June 11, 1998, and rebuttal briefs on June 18, 1998. At the request of all parties, the public hearing scheduled for June 19, 1998, was canceled.

Scope of Investigation

For purposes of this investigation, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/ or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K–M35FL, are excluded from the scope of the investigation. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon	0.05 max	Chromium	19.00/21.00
Manganese	2.00 max	Molybdenum	1.50/2.50
Phosphorous	0.05 max	Lead added	(0.10/0.30)
Sulfur	0.15 max	Tellurium	added (0.03 min)
Silicon	1.00 max		

K–M35FL

Carbon	0.015 max	Nickel	0.30 max
Silicon	0.70/1.00	Chromium	12.50/14.00
Manganese	0.40 max	Lead	0.10/0.30
Phosphorous	0.04 max	Aluminum	0.20/0.35
Sulfur	0.03 max		

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1996, through June 30, 1997.

Fair Value Comparisons

To determine whether sales of SSWR from Spain to the United States were made at less than fair value, we compared the Constructed Export Price (CEP) to the Normal Value (NV) as defined in sections 772(b) and 773(a) of the Act, respectively. We calculated CEP and NV following the general methodologies described in the preliminary determination. However, as noted in the ''Constructed Export Price'' and ''Normal Value'' sections below, we adjusted certain reported data based on our findings at verification and our positions discussed in the ''Interested Party Comments'' section of this notice. For further discussion, see the Calculation Memorandum from Howard Smith to Irene Darzenta dated July 20, 1998 (Calculation Memorandum).

Product Comparisons

We performed product comparisons based on the same characteristics and in the same general manner as that outlined in the preliminary determination. See *Comment 3* in the ''Interested Party Comments'' section of this notice.

As in the preliminary determination, in instances where Roldan has reported a non-AISI grade (or an internal grade code) for a product that falls within an AISI category, we have used the actual AISI grade in our analysis rather than the non-AISI grade reported by Roldan. In instances where the chemical content ranges of a reported non-AISI grade (or an internal grade code) are outside the parameters of an AISI grade, we have used the non-AISI (or internal) grade code reported by Roldan in our analysis. However, in instances in which an internal grade matches all the specified chemical content tolerance ranges of an AISI grade, but the internal grade also contains amounts of chemicals that are not otherwise specified as being included in the standard AISI designation, we have used the corresponding AISI grade rather than the internal grade.

Use of Constructed Value

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 133 F.3d 897 (Fed Cir.) (*Cemex*). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with the *Cemex* decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market, as described in the ''Scope of Investigation'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

Level of Trade

In the preliminary determination we found that Roldan's home market sales were at a different and more advanced level of trade than its U.S. sales; however, the information on the record did not permit us to quantify a level of trade (LOT) adjustment based on a pattern of consistent price differences and, thus, we were unable to grant a LOT adjustment. Because we reclassified Roldan's U.S. sales as CEP transactions we granted Roldan a CEP offset in accordance with section 773(a)(7)(B) of the Act. Our findings at verification continue to support our preliminary level of trade analysis. Moreover, we have continued to treat Roldan's U.S. sales as CEP transactions (see *Comment 1* in the ''Interested Party Comments'' section of this notice). Therefore, in the final determination, we have also granted Roldan a CEP offset.

Facts Available

At verification, we found that Roldan failed to report certain U.S. sales that were made by its affiliated U.S. sales agent during the POI. In accordance with section 776 (b) of the Act, we have used adverse facts available with regard to these sales in reaching our final determination. For further discussion, see *Comment 2* in the ''Interested Party Comments'' section of this notice.

Constructed Export Price

In the preliminary determination, we treated Roldan U.S. sales as CEP transactions even though Roldan reported all of its U.S. sales as export price (EP) transactions. In this final determination, we have continued to treat Roldan's U.S. sales as CEP transactions and, thus, we followed the methodology described in the preliminary determination to adjust CEP in accordance with section 772(b) of the Act. However, we revised the following U.S. sales data based on our verification findings: (1) the gross unit price for six observations; (2) the quantity for one observation; (3) the shipment date and credit expense for one observation; (4) the discount for one observation; (5) the U.S. inland freight for one observation; and (6) the indirect selling expenses incurred in both the home and U.S. markets for all U.S. observations (*see* the Sales Verification Report from Howard Smith to Holly Kuga, dated June 4, 1998, at pages 2, 3, 18, 24, 29 and 36 (Sales Verification Report)).

Normal Value

As noted in the preliminary determination, we determined that Roldan's sales in the home market serve as a viable basis for calculating NV. In performing the price-to-price comparisons described in the ''Fair Value Comparisons'' section of this notice, we followed the methodology described in the preliminary determination in adjusting NV in accordance with sections 773(a)(6) and 773(a)(7) of the Act. However, we revised the following home market sales data based on our verification findings: (1) the gross unit price for one observation; (2) the further processing code for one observation; and (3) the indirect selling expenses incurred in the home market for all home market observations (*see* the Sales Verification Report at pages 13, 14, and 21).

In addition, consistent with our finding in the preliminary determination, we have excluded from our analysis Roldan's home market sales to an affiliated consumer of SSWR because we determined that those sales were not made at arm's-length prices and, thus, were outside the ordinary course of trade. Furthermore, we found that for certain models of SSWR, more than 20 percent of Roldan's home market sales made within an extended period of time were sold at prices that were less than the cost of production (COP), and that these prices did not provide for the recovery of costs within a reasonable period of time. Thus, in accordance with section 773 (b)(1) of the Act, we disregarded the below-cost sales and used the remaining above cost sales as the basis for determining NV. For further discussion of the arm's-length and sales-below-cost test used in our analysis, see *Notice of Preliminary Determination*, at pages 13–16.

Calculation of COP

We calculated the weighted-average COP, which was used in our sales-below-cost test, in accordance with section 773(b)(3) of the Act. Specifically, we calculated the weighted-average COP for each model by adding together Roldan's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses and packing costs. We have relied on Roldan's reported COP except in the following specific instances where the reported amount was not appropriately quantified or valued:

(1) We disallowed Roldan's claimed startup adjustment (see *Comment 6* in the ''Interested Party Comments'' section of this notice and the Concurrence Memorandum from Peter Scholl and Howard Smith to Holly Kuga, dated July 20, 1998 (Concurrence Memorandum)).

(2) We increased reported COP by the amount of the inventory write-down that Roldan excluded from COP (see

Comment 7 in the ''Interested Party Comments'' section of this notice).

(3) We increased reported COP by the amount of the productive assets that were written off during the POI (see *Comment 8* in the ''Interested Party Comments'' section of this notice).

For further discussion of the above adjustments, see the Calculation Memorandum.

Currency Conversion

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank in accordance with Section 773A of the Act.

Interested Party Comments

Comment 1: Classifying U.S. Sales as EP or CEP Sales

In the preliminary determination, the Department reclassified all of Roldan's U.S. sales as CEP sales because it found that Roldan's affiliated U.S. sales entity, Acerinox, U.S.A., performed a variety of significant selling functions in connection with Roldan's U.S. sales, including negotiating sales terms with U.S. customers, reporting to Roldan concerning market conditions, and identifying U.S. customers. Roldan argues its U.S. sales should be classified as EP sales in the final determination because the Department verified that Acerinox, U.S.A. did not perform the selling functions attributed to it in the preliminary determination but merely communicated Roldan's sales terms to U.S. customers, provided Roldan with information about market events, such as potential antidumping complaints, and coordinated with U.S. freight forwarders to move SSWR through U.S. customs and to transport it to the U.S. customer. Roldan maintains these services are ancillary to its U.S. sales and demonstrate that Acerinox, U.S.A. is simply a ''processor of sales-related documentation'' and a ''communication link'' with the U.S. customer. Furthermore, Roldan claims Acerinox, U.S.A. did not provide some of the services which the Department considers to be indicative of a U.S. affiliate's substantial involvement in the sales process. Specifically, Roldan notes that Acerinox, U.S.A. did not evaluate U.S. customers' credit, negotiate sales terms without Roldan's approval and, except for two unusual sales, take title to the merchandise and invoice the U.S. customer. Roldan, citing *Certain Cut-to-Length Carbon Steel Plate From Germany: Final Results of Antidumping Duty Administrative Review,* 62 FR 18,390 (April 15, 1997), and *Extruded Rubber Thread From Malaysia: Final Results of Antidumping Duty Administrative Review,* 63 FR 12,752, 12,759 (March 16, 1998), notes that the Department has classified U.S. sales as CEP transactions where the U.S. affiliate performed the aforementioned sales activities. Moreover, Roldan claims that in other antidumping cases the Department found U.S. affiliates that performed more services than Acerinox, U.S.A. performed to be ''processors of sales-related documentation'' and ''communication links.'' In support of this claim, Roldan cites *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews,* 62 FR 18,404 (April 15, 1997), where, according to Roldan, the U.S. affiliate paid antidumping and countervailing duty cash deposits, extended credit to U.S. customers, processed warranty claims, and developed projects. Finally, Roldan notes that in the *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Spain,* 59 FR 66,931, 66,932 (December 28, 1994) (*Stainless Steel Bar*), the Department determined that Roldan's U.S. sales were properly classified as purchase price sales (now called EP sales) because ''the subject merchandise was sold to unrelated purchasers in the United States before importation and exporter sales price methodology (currently CEP methodology) was not otherwise indicated.'' According to Roldan, EP treatment, which should be determined using the same criteria as that applicable to the former purchase price treatment, is appropriate in the instant investigation because its U.S. sales process has not changed.

Furthermore, Roldan objects to the methodology the Department currently employs to determine whether an affiliated U.S. sales entity's activities are limited to that of a ''processor of sales-related documentation'' and a ''communication link.'' According to Roldan, the Department has unlawfully changed its long-standing analysis of this issue and now finds that unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary, the U.S. affiliate is more than a ''processor of sales-related documentation'' and a ''communication link'' and, thus, CEP treatment is appropriate. In support of this assertion, Roldan cites *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13170 (March 18, 1998) (*Steel From Korea*), in which, Roldan argues, the Department found the U.S. affiliates' role to be more than ancillary to the sales process and reclassified respondents' U.S. sales as CEP sales. Roldan argues that the Department's current analysis of this issue will make it impossible for a foreign manufacturer with a U.S. affiliate to classify its U.S. sales as EP sales because today's business practices often do not provide evidence of the extent of an affiliate's involvement in making a sale (*e.g.*, communication between foreign manufacturers and their U.S. affiliates is often over the telephone). Nevertheless, using the ''new'' analysis that the Department applied in *Steel From Korea*, Roldan maintains its U.S. sales remain EP sales. According to Roldan, the record in the instant investigation shows that Acerinox, U.S.A. performed fewer and less significant functions than those performed by the U.S. affiliates of the respondents whose sales were reclassified as CEP sales in *Steel From Korea*. Roldan also maintains its U.S. sales should be classified as EP sales under the Department's ''new'' analysis because Acerinox, U.S.A. incurred less indirect selling expenses than Roldan incurred in selling the subject merchandise.

Petitioners claim that the record in this investigation shows that Acerinox, U.S.A. is involved in every aspect of the sales process for Roldan's sales of SSWR in the United States and, thus, the Department correctly reclassified Roldan's U.S. sales as CEP sales for the preliminary determination and should continue to do so in the final determination. According to petitioners, the Department verified that Acerinox, U.S.A. (1) is contacted by U.S. customers inquiring about purchasing Roldan's SSWR; (2) contacted U.S. customers that it has not dealt with for some time; (3) accepted orders of less than 60 metric tons from U.S. customers without obtaining Roldan's approval of the sales terms; (4) handled returns of U.S. sales of Roldan's SSWR; and (5) inventoried Roldan's SSWR in the United States. Petitioners also note that Roldan identified Acerinox, U.S.A. as the selling agent for all of its U.S. sales of SSWR in its response to the Department's antidumping questionnaire. Regarding Acerinox, U.S.A.'s role in those sales, petitioners maintain that Roldan reported that Acerinox, U.S.A. contacts U.S. customers, accepts the customers' orders, collects the customers' payments, pays U.S. import duties on Roldan's SSWR and arranges for the transportation of SSWR from the port of entry to the U.S. customer. Furthermore, petitioners assert there is no evidence on the record supporting Roldan's claim that it approved the terms of its U.S. sales of SSWR or indicating that Roldan had any direct dealings with unaffiliated U.S. purchasers of its SSWR. Petitioners claim that the sales in question are CEP sales because Acerinox, U.S.A. handled all of the dealings with U.S. customers and in doing so, it acted as more than a ''processor of sales related documentation'' or a ''communications link'' (*see Steel From Korea* at page 13183).

Additionally, petitioners argue that if the Department continues to treat Roldan's U.S. sales as CEP sales, it must reduce U.S. price by the amount of the sales commission Roldan paid Acerinox, U.S.A. because (1) this amount exceeds the selling expenses incurred by Acerinox, U.S.A.; and (2) as Roldan has admitted on the record of this investigation, the commission payments are at arm's-length. Petitioners note that the Department's practice of not making any adjustment for commission expense if it is unable to determine that the commission was paid at arm's-length does not apply to the instant investigation.

DOC Position: We agree with petitioners, in part, and have continued to treat Roldan's U.S. sales as CEP sales in the final determination.

Section 772(b) of the Act defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) *in the United States* before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted'' (emphasis added). Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States, as adjusted.'' When sales are made prior to importation through an affiliated or unaffiliated U.S. sales agent to an unaffiliated customer in the United States, our practice is to examine several criteria in order to determine whether the sales are EP sales. Those criteria are: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent was limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. buyer. Where all three criteria are met, indicating that the activities of the U.S. selling agent are ancillary to the sale, the Department has regarded the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States where the sales agent performs them, and has determined the sales to be EP sales. Where one or more of these conditions is not met, indicating that the U.S. sales agent is substantially involved in the U.S. sales process, the Department has classified the sales in question as CEP sales. *See, e.g., Steel From Korea*, and *Viscose Rayon Staple Fiber from Finland: Final Results of Antidumping Duty Administrative Review*, 63 FR 32820 (June 16, 1998).

In the instant investigation, the sales in question were made prior to importation through Roldan's affiliated U.S. sales agent, Acerinox, U.S.A., to unaffiliated customers in the United States. The fact that the subject merchandise was shipped directly from Roldan to the unaffiliated U.S. customers and that this was the customary commercial channel between these parties is not disputed. The issue is whether Acerinox, U.S.A.'s role in the sales process was incidental or ancillary to the sale (*i.e.*, limited to that of a ''processor of sales-related documentation'' and a ''communications link'').

We have determined that the extent and nature of Acerinox, U.S.A.'s involvement in selling Roldan's SSWR indicates that the subject merchandise sales occurred in the United States and, thus, are CEP transactions. The record shows that during the POI, the sales process for Roldan's U.S. sales of SSWR typically included the following events:[1]

(1) On occasion, Acerinox, U.S.A. will contact U.S. customers that it has not dealt with for some time. Otherwise, U.S. customers contact Acerinox, U.S.A. to inquire about purchasing Roldan's SSWR. Acerinox, U.S.A. does not actively market Roldan's SSWR in the United States because Roldan's product is well-known among the relatively small number of customers in the marketplace.

(2) Acerinox, U.S.A. may accept the customer's order, if it is a small order, without contacting Acerinox, S.A.[2] in Spain to determine if Roldan will accept the sales terms. Acerinox, U.S.A. accepts small orders based on its past dealings with Roldan, its knowledge of Roldan's requirements, and the parameters Roldan sets regarding sales terms. For inquiries regarding significant purchases (generally more than three containers or 60 metric tons), Acerinox, U.S.A. will contact Acerinox, S.A. to determine the sales terms that Roldan will accept. Roldan will then specify an acceptable price, and any acceptable deviations from this price depending on the quantity the customer requires, the price the customer desires, and/or the historical relationship with the customer making the inquiry. In setting the price, Acerinox, U.S.A. may provide its opinion as to whether Roldan can obtain a more favorable price from the customer.

(3) After an order is accepted, Acerinox, U.S.A. transmits the order through Acerinox, S.A. to Roldan.

(4) After Roldan has produced the order, Acerinox, S.A. arranges transportation of the subject merchandise to the United States.

(5) Acerinox, U.S.A. coordinates with U.S. freight forwarders to move the subject merchandise through U.S. Customs and to transport it to U.S. customers.

(6) Acerinox, S.A. invoices U.S. customers in Roldan's name.

(7) U.S. customers remit payment to Acerinox, U.S.A., which subsequently transfers the payment to Roldan by wire.

Thus, the record shows that Acerinox, U.S.A. was involved in every aspect of the sales process except for arranging for shipment of SSWR to the United States and invoicing U.S. customers. Moreover, Acerinox, U.S.A.'s involvement in the sales process was extensive when compared to that of Roldan or Acerinox, S.A. Accordingly, the preponderance of selling functions incurred to sell Roldan's SSWR to U.S. customers occurred in the United States.

Furthermore, Acerinox, U.S.A.'s role in negotiating the terms of certain U.S. sales is not indicative of the ancillary role normally played by a ''processor of sales-related documentation'' and a ''communications link.'' Specifically, Acerinox, U.S.A.'s authority to negotiate and accept sales terms for small orders of SSWR without Roldan's specific

[1] *See* the Sales Verification Report at page 33.

[2] Acerinox, S.A., the parent company of Roldan and Acerinox, U.S.A., provides a number of services in connection with Roldan's U.S. sales of SSWR including serving as a communication link between Roldan and Acerinox, U.S.A. (*e.g.*, directs customers' technical questions to the appropriate Roldan personnel). Roldan pays Acerinox, S.A. a fee for these services.

approval of the orders, as well as its authority to initiate contact with U.S. customers that it has not dealt with for some time, contradicts Roldan's claim that Acerinox, U.S.A. was simply a ''processor of sales-related documentation'' and a ''communications link.'' In addition, there is no documentary evidence supporting Roldan's claim that it approved the sales terms for all large orders (*e.g.*, evidence of price acceptance or rejection by Roldan); nor is there any evidence of direct contacts or agreements between Roldan and the ultimate U.S. purchasers of the subject merchandise. The absence of such evidence and Acerinox, U.S.A.'s admitted role in negotiating the terms of small orders, calls into question Roldan's claim that Acerinox, U.S.A. was simply a ''communication link'' in the sales negotiation process. Moreover, Acerinox, U.S.A.'s extensive involvement in the U.S. sales process, its authority to negotiate and accept sales terms in certain situations and the fact that it initiated contact with U.S. customers on occasion, distinguishes the instant case from the cases Roldan cited to support EP treatment of its sales. Therefore, we have determined that Roldan's U.S. sales were made in the United States and, in accordance Section 772(b) of the Act, we have classified these sales as CEP sales for the final determination.

However, we disagree with petitioners' argument that the Department must reduce Roldan's CEP sales by the amount of the sales commission Roldan paid Acerinox, U.S.A. in connection with its U.S. sales of SSWR. Section 772(d) of the Act provides that CEP shall be reduced by selling expenses ''incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise.'' Section 351.402(e) of the Departments regulations states that ''where a person affiliated with the exporter or producer incurs any of the expenses deducted from constructed export price under section 772(d) of the Act and is reimbursed for such expenses by the exporter, producer or other affiliate, the Secretary normally will make an adjustment based on the actual cost to the affiliated person.'' In the instant investigation, Acerinox, U.S.A. incurred selling expenses that are deducted from CEP under section 772 (d) of the Act, and Roldan reimbursed Acerinox, U.S.A. for these expenses through the commission. Therefore, in accordance with section 351.402(e) of the Department's regulations, for the final determination we adjusted Roldan's CEP sales by Acerinox, U.S.A.'s actual selling expenses, revised based on verification findings.

Comment 2: Unreported U.S. Sales

At verification, the Department found that Roldan's U.S. affiliate, Acerinox, U.S.A., purchased shipments of Roldan's SSWR that were rejected by U.S. customers, held the rejected SSWR in inventory, and then resold the rejected SSWR to other unaffiliated customers in the United States. However, Roldan failed to report Acerinox, U.S.A.'s sales of SSWR during the POI. At verification, Roldan stated that it did not report these sales because they were not made in the ordinary course of trade. Petitioners maintain Roldan should have reported these sales because the antidumping provisions allow sales outside the ordinary course of trade to be excluded from reported home market or third country sales, but not from U.S. sales. Petitioners also note that although the original sales of SSWR were canceled, the subsequent resales of SSWR by Acerinox, U.S.A. should have been reported because they were not canceled. In addition, petitioners contend that the information on the unreported sales that Roldan provided at verification constitutes factual information that must be submitted no later than seven days before verification. Thus, petitioners argue, this information was untimely and should not be used by the Department in the final determination. Petitioners, cite the *Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From France* 58 FR 68,865, 68,869 (December 29, 1993) (*Wire Rods From France*), in support of their view that the Department should assign a margin to the unreported sales equal to the greater of the average margins alleged in the petition, or the highest non-aberrant margin calculated from Roldan's data.

Roldan claims it properly excluded Acerinox, U.S.A.'s resales of rejected SSWR from reported sales. Specifically, Roldan argues that it should not have reported the sales in question because the original U.S. customers canceled the sales and the Department's antidumping questionnaire clearly instructs respondents not to report canceled U.S. sales. Even if the Department should ignore the instructions in its antidumping questionnaire, Roldan maintains it properly excluded these sales from reported sales because they were sold in a completely different manner from the rest of its U.S. sales and, thus, were outside the ordinary course of trade. In particular, Roldan states that its U.S. customers typically order SSWR prior to its production and importation and that the SSWR is shipped directly to the customer, whereas Acerinox, U.S.A. resold SSWR to customers after the material had been produced, shipped to the original customer in the United States, and then re-shipped to Acerinox, U.S.A. or Acerinox, U.S.A.'s customer. In addition, Roldan notes that Acerinox, U.S.A. informed its customers that they were purchasing rejected material and the Department has excluded U.S. sales of defective merchandise from its antidumping analysis in past cases such as the *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From Finland*, 56 FR 56,363, 56,371 (November 4, 1991).

According to Roldan, the antidumping statute, legislative history, and the Department's past practice support a finding that these sales are outside the ordinary course of trade. Roldan states that in addition to certain sales below the COP and certain sales between affiliated parties, the Statement of Administrative Action (SAA) allows the Department to ''consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions made in the same market.'' While conceding that the ordinary course of trade requirement has historically been applied to home market or third country sales, Roldan, citing *Ipsco Inc.* versus *United States*, 714 F. Supp 1211, 1217 (Ct. Int'l Trade 1989) (*Ipsco*), notes that the Department may disregard certain U.S. sales if ''the inclusion of [such] sales, which are clearly atypical, would undermine the fairness of the comparison of foreign and U.S. sales.'' Roldan also notes that in *Ipsco*, the Court recognized the Department's practice of excluding sales that are not representative of the seller's behavior and sales whose volume is so low that they would have an insignificant effect on the margin. Roldan notes that the resales of rejected SSWR constituted such a small percentage of Acerinox, U.S.A.'s sales that they cannot be considered representative of Acerinox, U.S.A.'s behavior. Thus, for the reasons outlined above, Roldan asserts that Acerinox, U.S.A.''s resales of SSWR are outside the ordinary course of trade and should not have been reported to the Department.

However, if the Department determines that this small quantity of sales should have been reported, Roldan requests that the Department use the actual verified sales data that was provided at verification. Roldan claims petitioners' argument that the Department should assign a margin to these sales using adverse inferences fails because such inferences are only appropriate when an interested party fails to cooperate by not acting to the best of its ability to reply to a request for information from the administering authority or the Commission. Roldan argues that petitioners misapplied the Department's ruling in *Wire Rods From France* to the instant investigation because, unlike *Wire Rods From France,* wherein the respondents failed to report all sales transactions in a timely manner, Roldan did not report the sales in question because the Department's antidumping questionnaire specifically instructed Roldan to report sales net of returns. Moreover, Roldan claims that it presented information concerning the unreported sales on its own initiative as part of the completeness test conducted at verification and that it has fully cooperated with the Department's requests for additional information regarding these sales. Thus, Roldan maintains there is no basis for the Department to use adverse facts available to determine the margin for these unreported sales.

DOC Position: We agree with petitioners. Section 772(b) of the Act defines CEP as the ''price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by * * * a seller affiliated with the producer or exporter to a purchaser not affiliated with the producer or exporter * * *'' Thus, in the antidumping questionnaire issued in this investigation, the Department instructed Roldan to ''prepare a single response which includes the information for all affiliates. The questionnaire goes on to state that the respondent should ''include information concerning affiliates which sold the products under investigation during the period of investigation (''POI'') in the comparison market or the United States market or both. Combine the sales and cost of these affiliates with your sales and cost in the same computer data file(s) and submit a single combined narrative response.'' *See* the Department's antidumping questionnaire dated September 19, 1997 at page G–6. Roldan failed to comply with the Department's instructions even though its U.S. affiliate, Acerinox, U.S.A., sold subject merchandise to unaffiliated purchasers during the POI. The fact that Acerinox, U.S.A. purchased subject merchandise from Roldan after Roldan's original U.S. customer rejected the shipment and canceled the sale does not change the fact that Acerinox, U.S.A. subsequently resold that merchandise to other unaffiliated U.S. customers during the POI. Those resales were not canceled and should have been reported to the Department.

In addition, the ordinary course of trade provision does not apply to U.S. transactions (*see Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8931 (Comment 22) (February 23, 1998)). As the U.S. Court of International Trade (CIT) noted in *American Permac, Inc., et al.,* versus *The United States,* 783 F. Supp. 1421, 1423 (CIT 1992) (*American Permac*), ''regular exclusion of sales not in the ordinary course of trade only occurs on the home-market side of the price comparison.'' The court went on to state that ''whether sales are in or out of the ordinary course of trade is not the determinative factor on the U.S. sales side of the equation. Fairness, distortion, representativeness are the issues to be examined. The goal is to include the sales but to utilize whatever methodology is needed to ensure a fair comparison.'' 783 F. Supp. 1421, 1424. While the Department may at times exclude certain U.S. sales in order to ensure a fair comparison (as noted in *Ipsco*), in the instant investigation there is no need to exclude the sales at issue because, based on the record evidence (including our examination of sales documentation), we cannot conclude that these sales are in any way unrepresentative or would otherwise improperly distort our calculations. We also note that prior to the submission of its case brief, Roldan never requested exclusion of the sales at issue or exoneration of the reporting requirement with respect to these sales. It was not until after the Department had discovered the unreported sales at verification (*see* the Sales Verification Report at page 12) that Roldan raised the issue of excluding the unreported sales. Therefore, based on the foregoing, we conclude that such sales should have been reported to the Department.

As indicated above, Roldan states that if the Department decides that the sales at issue should have been reported, it should use the actual verified sales data that was provided at verification. However, at verification the only information that the Department requested, and that Roldan provided with regard to Acerinox, U.S.A.'s resales of subject merchandise, was the quantity and gross unit price of each sale. The Department requested this information to determine the magnitude of the unreported sales in comparison to the reported U.S. sales. The Department did not request, and Roldan did not provide, the data required to adjust the gross unit price of the unreported sales in accordance with section 772(c) of the Act (*e.g.,* information on freight and other selling expenses). Moreover, even if Roldan had provided this information at verification, it is unlikely that the Department would have considered the information timely and accepted it (*see* 19 CFR 351.301(b)(1) and 351.302(d)).

Section 776 (a) of the Act provides that when necessary information is not available on the record, the administering authority shall * * * ''use the facts otherwise available in reaching the applicable determination under this title.'' Section 776 (b) of the Act states that ''if the administering authority or the Commission (as the case may be) 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 from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.''

For this final determination, the Department finds that Roldan failed to act to the best of its ability to comply with the Department's requests for information regarding sales of subject merchandise by Acerinox, U.S.A. In its response to section C of the Department's antidumping questionnaire, Roldan stated that it did not incur inventory carrying costs in the United States because Acerinox, U.S.A. ''does not take possession of, or warehouse, the subject merchandise.'' However, because Acerinox U.S.A.'s 1996 balance sheet reported an inventory balance, in a supplemental questionnaire, the Department specifically asked Roldan whether Acerinox, U.S.A. sold subject merchandise from inventory during the POI. In its January 16, 1998 response to the Department's supplemental questionnaire, Roldan stated that ''Acerinox, U.S.A. does not keep inventory of Roldan SSWR, nor generally speaking, of any of Roldan's products. * * * The inventory balance that appears in the 1996 Acerinox, U.S.A. annual report relates to non-subject merchandise.'' However, at verification, the Department found substantial documentation evidencing Acerinox, U.S.A.'s sales of Roldan's SSWR from inventory during the POI. The fact that this documentation was readily available and company officials had knowledge of these sales, as evidenced by their responses to questioning at verification, yet Roldan failed to identify and report these sales even when the Department specifically requested that it do so, indicates that Roldan did not act to the best of its ability to comply with the Department's request for information. Consequently, for the final determination we have based the margin for all unreported U.S. sales on adverse facts available. As adverse facts available (AFA), we have selected a sufficiently adverse margin from the fair value comparisons which were performed for Roldan's reported sales. The selected AFA margin is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner. *See* the SAA at page 870. We also sought a margin that is indicative of Roldan's customary selling practices and is rationally related to the transactions to which the AFA are being applied. To that end, we selected a margin for sales of a product that involved a substantial commercial quantity and fell within the mainstream of Roldan's transactions based on quantity. Finally, we found nothing on the record to indicate that the sales of the product we selected were not transacted in a normal manner. For details regarding the methodology used to calculate the AFA margin, see the Calculation Memorandum, dated July 20, 1998.

Comment 3: Diameter as a Model Match Criterion

Roldan contends that the diameter of SSWR should not be one of the model-match criteria used in the instant investigation because it has no appreciable affect on Roldan's production costs and no affect on the price Roldan charges its U.S. customers. Roldan notes that the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, and section 351.411 of the Department's regulations, require that in making a fair comparison between EP and NV, due allowance shall be made for differences which affect price comparability, including differences in physical characteristics. According to Roldan, this requirement implies that physical characteristics that do not affect price should not be used in matching products for price comparison purposes. Roldan maintains that the Department examined numerous sales invoices at verification and found that Roldan charged the same price for different diameters of SSWR with the same AISI grade that were sold to the same customer under the same invoice. Moreover, Roldan notes that it placed evidence on the record of this proceeding showing that U.S. companies, including one petitioner, sell different diameters of the same AISI grade of SSWR at the same price. Therefore, Roldan contends, that price is based on AISI grade and the seller's historical commercial relationship with the customer, not the diameter of the product. In addition, Roldan maintains there is no cost basis for using diameter as a model match criterion because diameter has no affect on its cost of producing SSWR. Roldan claims it demonstrated at verification that smaller diameter SSWR, which requires more passes through the rolling mill than larger diameter SSWR, can have costs similar to larger diameter SSWR because of the quantities produced and the order of production. Finally, Roldan argues that in the instant investigation, matching products for price comparison purposes using the product's diameter has artificially created a dumping margin because this methodology gives greater significance to a product category with a large U.S. and relatively small home market sales volume. Roldan claims this matching methodology, together with the additional weight given to dumping margins of products with a large U.S. sales volume, has created a dumping margin where none exists. Thus, Roldan contends there is overwhelming evidence on the record of this investigation showing that diameter should not be used as a model-match criterion. According to Roldan, AISI grade is the only appropriate model-match criterion.

While petitioners are not in complete agreement with the model-matching methodology the Department is using in the instant investigation [3], petitioners argue that Roldan's suggestion that the Department use AISI grade as the only model-matching criterion is unjustified, flawed, and untimely. Specifically, petitioners claim Roldan's assertion that it demonstrated at verification that diameter has ''no appreciable effect'' on its cost of producing SSWR misstates the Department's verification findings. Petitioners maintain the Department actually found that Roldan does not distinguish between the cost of different diameters of SSWR in its cost accounting records. Therefore, petitioners contend that Roldan's records prevented the Department from verifying Roldan's claim that the actual costs incurred to produce different diameters of SSWR is the same. Furthermore, petitioners argue that if production costs for different diameters of SSWR were the same, and price is not based on diameter, the use of diameter as a model-matching criterion should not distort the dumping margin as Roldan suggested. Petitioners also maintain that using AISI grade as the sole model-matching criterion increases the potential for manipulation of model matches and impairs the Department's ability to select, where necessary, the most similar model, because the Department would not have additional information on the record describing the product's physical characteristics. Finally, petitioners state that Roldan first asserted that diameter has no ''appreciable'' effect on production costs more than four months after the antidumping questionnaire was issued, which was well after the Department had considered the parties' views on model-matching and decided on its model-matching methodology. Thus, according to petitioners, Roldan's argument is untimely. For the above reasons, petitioners urge the Department to use the product matching criteria identified in the antidumping questionnaire in the final determination.

DOC Position: We agree with petitioners and have continued to use diameter as a model-matching criterion in the final determination. In determining whether a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, the Department compares the price of subject merchandise sold in the United States with the price of the ''foreign like product'' sold in the foreign market. Section 771(16) of the Act defines ''foreign like product'' as: ''merchandise in the first of the following categories in respect of which a determination for the purposes of subtitle B of this title can be satisfactorily made:

(A) The subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.

(B) Merchandise—

(i) produced in the same country and by the same person as the merchandise which is the subject of the investigation,

(ii) like that merchandise in component material or materials and in the purposes for which used, and

[3] During the course of the instant investigation, petitioners requested that the Department include actual chemical content of the steel, rather than AISI grade, as one of the model-matching criteria. For further discussion, see the December 18, 1997 Decision Memorandum to Holly Kuga from The Team, Subject: Whether to Reconsider the Department's Model Match Methodology for This Product.

(iii) approximately equal in commercial value to that merchandise.

(C) Merchandise—

(i) produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation, (ii) like that merchandise in the purposes for which used, and

(iii) which the administering authority determines may reasonably be compared with that merchandise.''

In making fair value comparisons, the Department identifies the ''foreign like product'' by comparing the physical characteristics of subject merchandise with the physical characteristics of merchandise sold in the foreign market. So as not to unreasonably distort comparisons involving similar merchandise, the Department does not compare subject merchandise sold in the United States to merchandise sold in the foreign market where the cost of the merchandise differs from the cost of subject merchandise by more than 20 percent (*see* Policy Bulletin 92.2).

In the instant investigation, after soliciting comments from interested parties, the Department determined that diameter should be one of the characteristics (*i.e.,* one of the matching criteria) used to make product comparisons. Although Roldan argues that diameter is an inappropriate characteristic for purposes of model matching, it has not placed substantial evidence on the record showing that the Department's decision to use diameter as a matching criterion is unreasonable. As noted by the CIT in *Toyo Umpanki Co., Ltd.* v. *United States,* 848 F. Supp. 178, 185 (CIT 1994) (*Toyo*), the Department has ''broad discretion in choosing a methodology to carry out its statutory mandate'' under section 771(16) of the Act which governs model matching. Regarding that methodology, the CIT noted in *Toyo,* that ''even if another alternative is more reasonable, Commerce has acted within its authority if its decision is reasonable.'' Roldan's argument that the Department's matching methodology distorted the dumping margin by comparing a product category with a large U.S. and relatively small home market sales volume, seems to argue indirectly for the need for a price adjustment under section 773(a)(6)(C)(i) of the Act, which respondent has not claimed, rather than a need to alter the Department's matching criteria. Furthermore, Roldan's argument that diameter has no affect on sales price is questionable because at verification, the Department found instances where Roldan sold different diameters of the same AISI grade of SSWR to the same home market customer under the same invoice but at different prices (*see* the Sales Verification Report from at pages 16–17). Although the Department found at verification that Roldan records the same cost for different diameters of a particular grade of SSWR, this fact alone is insufficient to show that the Department acted unreasonably in selecting the model-matching criteria and that its selection distorts the dumping margin. Roldan has not demonstrated that diameter is not a factor in pricing SSWR. Moreover, it is more reasonable to conclude that if the cost and price of different diameters of the same AISI grade of SSWR are the same, as Roldan claims, using diameter as a matching criterion should not distort the dumping margin. Therefore, we have continued to use diameter as a model matching criterion in the final determination.

Comment 4: Identifying the Appropriate Interest Rate for the U.S. Credit Expense Calculation

At verification, the Department found that Roldan calculated its U.S. credit expenses using the weighted-average interest rate on short-term peseta-denominated loans that were obtained to finance U.S. dollar receivables. The Department also found that Roldan did not have any outstanding U.S. dollar-denominated loans during the POI. Petitioners note that the Department's antidumping questionnaire instructs respondents to calculate U.S. credit expenses using a published U.S. commercial bank short-term prime lending rate if they had not borrowed U.S. dollars. Thus, for the final determination, petitioners urge the Department to recalculate Roldan's U.S. credit expenses using the U.S. prime interest rate for the POI. Based on data from the Chicago Federal Reserve Bank, petitioners identify this rate as 8.317 percent.

Contrary to the Department's verification findings, Roldan maintains that the evidence on the record of this investigation shows it calculated U.S. credit expenses using the weighted-average interest rate on short-term U.S. dollar-denominated loans. Specifically, Roldan identifies sales verification exhibit 19a, which contains bank documentation showing the amount of U.S. dollars borrowed and the peseta equivalent to this amount. To support its claim, Roldan notes that it must borrow to pay expenses incurred in U.S. dollars and repay the U.S. dollar-denominated loans using pesetas because it does not have a U.S. dollar bank account. Roldan maintains the Department should accept the reported U.S. credit expenses for the final determination because Roldan used the proper interest rate to calculate those credit expenses.

DOC Position: We agree with Roldan and have accepted the interest rate Roldan used to calculate the reported U.S. credit expenses for the final determination. During the POI, Roldan financed U.S. dollar receivables by obtaining short-term bank loans. Because Roldan did not have a U.S. dollar bank account, the bank converted the amount of the U.S. dollar loans into pesetas and deposited the pesetas into Roldan's bank account. Because Roldan actually received pesetas and not U.S. dollars, the Department identified the loans as peseta-denominated loans in its verification report and questioned whether it was appropriate to calculate U.S. credit expenses using the weighted-average interest rate on these loans. However, upon further examination of the verification exhibits related to these loans, we have determined that the loans are dollar-denominated.[4] We reached this determination because the bank documentation examined at verification shows that (1) the amount borrowed and the related interest charges were originally stated in U.S. dollars; and (2) Roldan repaid the loans using U.S. dollar receipts that were wired directly from the United States to Roldan's bank in Spain, which loaned Roldan the monies in question, and then applied to the outstanding loan balances at the same bank. The fact that the amount borrowed and the related interest charges were converted into pesetas in order for Roldan to deposit the funds into, and repay the interest expense from, its bank account, does not change the fact that Roldan originally borrowed dollars, repaid the loans in dollars, and paid dollar-based interest charges on the loans. Thus, we have accepted the short-term interest rate Roldan used to calculate U.S. credit expenses for the final determination.

Comment 5: Using Estimates to Determine Home Market Indirect Selling Expenses

Petitioners urge the Department to reject Roldan's adjustment for home market indirect selling expenses because, petitioners aver, at verification, Roldan failed to provide information to support the estimated allocation percentages used in calculating the adjustment.

Roldan contends the Department should accept the estimated allocation percentages used to calculate the home

[4] *See* the Sales Verification Report at verification exhibit 19a.

market indirect selling expense adjustment because they are reasonable, and the company does not keep records in the normal course of business that would allow it to determine the actual percentages that it estimated. Roldan holds that its estimates are based on its significant commercial experience and knowledge of its selling expenses and, thus, are reasonable. In addition, Roldan asserts that its home market indirect selling expenses were ''substantially verified'' and that the results of the sales and cost verifications demonstrate that Roldan has provided complete and accurate information to the Department throughout the investigation. Therefore, Roldan maintains the Department has no reason to believe the estimates are unreasonable. Furthermore, Roldan states that the Department cannot require a respondent to support information in its responses with documentation which it does not maintain. Roldan cites *Olympic Adhesives, Inc.* v. *United States,* 899 F. 2d 1565, 1573 (Fed. Cir. 1990), arguing that in this case, the Court ruled that failure to provide information that does not exist does not warrant the use of best information available. Roldan also notes that its accounting system was not designed to supply information that may be required by the Department in antidumping duty investigations. Therefore, Roldan urges the Department to accept its claimed home market indirect selling expenses.

DOC Position: We agree with Roldan and have accepted its use of estimates in calculating the adjustment for home market indirect selling expenses in the final determination. At verification, we were able to reconcile selected expense and cost of sales figures from Roldan's calculation of the home market indirect selling expense adjustment to its financial records (*see* the Sales Verification Report at page 21). However, we noted that in calculating the home market indirect selling expense adjustment, Roldan classified a portion of employee costs and general expenses as indirect selling expenses based on estimated allocation percentages. We found no evidence at verification that Roldan maintained records in the normal course of business that would allow it to classify a portion of these expenses as indirect selling expenses based on actual figures rather than estimates. Moreover, the overall results of verification and the insignificant amount of the reported home market indirect selling expense adjustment suggest that Roldan did not overstate the adjustment. Therefore, it is reasonable to presume that Roldan made these estimates in good faith and that they may be relied upon.

Comment 6: Adjusting Costs for Startup Operations

In the instant investigation, Roldan claimed an adjustment to production costs for expenses incurred in ''starting up'' its refurbished rolling mill and pickling facility. Based on its startup claims, Roldan submitted two COP and CV databases. In the first database, submitted as part of Roldan's initial questionnaire response, the Company reported COP and CV that was adjusted for startup costs based on the methodology Roldan used in its normal books and records to account for startup costs. In response to our supplemental questionnaire, Roldan submitted a second COP and CV data file with a revised adjustment for start-up costs based on the methodology described in section 773(f)(1)(C) of the Act. Petitioners urge the Department to reject both of Roldan's claimed startup adjustments because Roldan (1) incorrectly identified the startup period; (2) failed to amortize startup costs; and (3) failed to separately report the actual POI costs and the startup adjustment. First, petitioners note that Roldan's accounting and production records do not support the claimed startup period. Specifically, petitioners note that in its normal accounting records, Roldan adjusted costs to account for what it considered to be the excess startup costs of the rolling mill by replacing the unit production costs incurred from September through December 1996, with the unit costs incurred during the previous eight months of that year (Roldan reported the excess amount of September through December production costs over the costs for the previous eight months as non-operating expenses in its 1996 financial statement). Thus, petitioners maintain that Roldan's books and records show the startup period ended on December 31, 1996. However, petitioners point out that Roldan did not use this startup period to calculate the adjustment, despite the statutory requirement in section 773(f)(1)(A) of the Act that production costs be calculated based on the records of the exporter or producer of the merchandise. Moreover, petitioners claim that the startup period used in Roldan's accounting records is supported by the startup provisions in section 773 of the Act. Petitioners note that section 773(f)(1)(C) of the Act defines the end of the startup period as ''the point at which the level of commercial production that is characteristic of the merchandise, producer, or industry concerned is achieved.'' According to petitioners, this means that Roldan's startup period ended when it achieved the average level of production that it normally experienced before refurbishing its facilities. Petitioners maintain that the rolling mill production data that Roldan placed on the record in this investigation shows that this average level was achieved at a point which confirms the startup period used in Roldan's books and records. Therefore, petitioners maintain that the record supports a startup period other than the one used to calculate the reported startup adjustment. Second, petitioners state that Roldan failed to amortize excess startup costs over a period subsequent to the startup period in accordance with the SAA's interpretation of section 773(f)(1)(C)(iii) of the Act. Finally, petitioners note that in calculating the startup adjustment that was based on the methodology in section 773(f)(1)(C) of the Act, Roldan accounted for the startup adjustment by replacing actual POI unit costs incurred during the startup period with actual unit costs incurred immediately after the startup period ended. According to petitioners, Roldan should have reported actual unit costs incurred during the POI, in accordance with the instructions in section D of the Department's questionnaire, and separately reported the startup adjustment. Because of the above deficiencies, petitioners ask the Department to reject Roldan's claimed startup adjustment.

Roldan believes the Department erred in disallowing its startup adjustment in the preliminary determination because, according to Roldan, it satisfied the statutory conditions under which the Department must make an adjustment for startup costs. Roldan claims it satisfied the first statutory condition, which requires a producer to be using a new production facility or producing a new product that requires substantial additional investment, because during the POI it replaced nearly all of the equipment in its rolling mill and modified much of the remaining old equipment so it would work in the new mill. Roldan notes that under section 351.407(d)(1)(i) of the Department's regulations, a producer is considered to be using new production facilities when it has replaced nearly all of the production machinery in its facility. Roldan also notes that it placed substantial evidence on the record, which the Department verified, showing that it extensively refurbished its mill. Roldan also claims it placed substantial evidence on the record showing that it satisfied the second statutory condition for a startup adjustment, which requires that production levels be limited by technical factors associated with the initial phase of commercial production. Accordingly, Roldan concludes that a startup adjustment is required in the instant investigation. Furthermore, Roldan notes that it placed evidence on the record, including the installation contract with the company that refurbished the rolling mill, which shows that it used the proper startup period in calculating the startup adjustment. Roldan adds that its rolling mill has not yet reached optimum capacity.

Roldan disagrees with petitioners' rationale for rejecting the reported startup adjustment. Specifically, Roldan holds that the startup period used to calculate the adjustment does not have to be the same as that used in a company's accounting records in order for the Department to accept the claimed startup adjustment. Roldan notes that section 773(f)(1)(A) of the Act states that ''costs shall normally be calculated based on the records of the exporter or producer of the merchandise * * * '' According to Roldan, the startup provisions were included in the Act to allow an exception to the requirement that reported costs reflect the producer's normal records. Roldan states that this exception recognizes the fact that producers may incur unusually high costs when starting a new production facility. Furthermore, Roldan disputes petitioners' claim that the startup period ended when Roldan achieved the average level of production that it normally experienced before refurbishing its facilities. Roldan notes that under section 773(f)(1)(C)(iii) of the Act, ''the startup period ends at the point at which the level of commercial production that is characteristic of the merchandise, producer, or industry concerned is achieved.'' Because the mill refurbishment increased production capabilities, Roldan argues that pre-refurbishment production levels cannot be compared to post-refurbishment production levels in order to determine the point at which Roldan achieved commercial production levels indicative of the end of startup. Roldan asserts that one must compare its post-refurbishment production levels with production levels characteristic of the SSWR industry using the same type of rolling mill as Roldan in order to determine when Roldan's startup period ended. Roldan contends that the best indicator of this ''industry standard'' for commercial production is the arm's-length, pre-petition installation contract for the new mill which identified the quantity of SSWR to be rolled in a specified number of consecutive runs in order to reach commercial production levels. Thus, Roldan claims it appropriately determined that its startup period ended when it reached the commercial production levels specified in the installation contract. Consequently, Roldan urges the Department to accept its claimed adjustment for startup costs.

DOC Position: We have disallowed Roldan's claimed adjustment for startup costs because the company did not demonstrate its eligibility for such an adjustment. Specifically, Roldan failed to show that the renovation of the company's rolling and pickling mills was, indeed, the equivalent of a ''new production facility'' within the meaning of section 773(f)(1)(C) of the Act.

Section 773(f)(1)(C) of the Act directs the Department to provide for an adjustment to the actual costs incurred during the period of investigation or review where such costs are affected by the startup operations of the producer. The statute provides, however, that the adjustment is required only for those startup operations where (1) a producer is using new production facilities or producing a new product that requires substantial additional investment, and (2) production levels are limited by technical factors associated with the initial phase of commercial production. At the most basic level, the statutory condition surrounding ''new production facilities'' is certainly meant to include those startup operations that involve entirely new production facilities. *See*, for example, *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan,* 63 FR 8909, 8930 (February 23, 1998) (where the Department granted a startup adjustment for the subject merchandise manufactured using a brand new semiconductor fabrication line installed by the respondent during the POI). Yet, as made clear by the SAA at page 836, the term ''new production facilities'' may also include startup operations involving ''the substantially complete retooling of an existing plant.'' Here, the phrase ''substantially complete retooling'' is said to involve ''the replacement of nearly all production machinery or the equivalent rebuilding of existing machinery.''

There are any number of instances in which producers may choose to retool, refurbish, or expand their existing operations. These may range from changing a worn machine part to the replacement of all existing plant assets. Moreover, in most of these instances, normal production levels are disrupted as a consequence of the operations. Yet, in establishing a high threshold for operations involving the ''substantially complete retooling'' of a facility, the SAA, in effect, limits the situations in which retooling satisfies the conditions for a startup adjustment by equating such operations to those involving an entirely new facility. That is, in order for an existing facility to be considered a new production facility within the meaning of section 773(f)(1)(C) of the Act, the SAA provides that it must be retooled to the extent that it becomes a brand new facility in virtually all respects. Indeed, the ''replacement of nearly all production machinery or the equivalent rebuilding of existing machinery'' would result in nothing less than an essentially new facility. Thus, the SAA makes clear that, in analyzing these situations, an adjustment for startup costs is warranted only in those circumstances wherein the renovations result in a near new facility.

In the instant case, Roldan claimed that the investment it made in refurbishing the company's rolling and pickling mills met the statutory definition of ''new production facilities.'' In its questionnaire responses and at verification, Roldan demonstrated that it had, in fact, committed a significant amount of investment capital as part of the renovation project. In addition, at the verification, Roldan officials provided documentation supporting the purchase and installation of new production machinery. Roldan officials maintained that the new equipment replaced virtually all of the equipment from the old rolling and pickling mills. Indeed, Roldan provided a plant diagram as evidence of this claim. In verifying Roldan's claim for a startup adjustment, however, we found data from the company's normal accounting records that contradicted Roldan's claim that it had replaced or rebuilt nearly all of the previously existing production machinery as part of the renovation project. Portions of this information are proprietary in nature and are therefore discussed in detail in a separate memorandum. See the Concurrence Memorandum. In general, however, while Roldan claims to have replaced or rebuilt the production machinery from its old rolling and pickling mills, the company's accounting records do not support the contention that the company disposed of these assets or otherwise removed them from service. In the absence of a showing by Roldan that the old production equipment was, in fact, scrapped or otherwise disposed of, we have no basis from which to conclude that the renovation project resulted in the replacement of nearly all of the previously existing equipment or the equivalent rebuilding of such equipment.

The SAA at page 838 provides that the burden of demonstrating entitlement to a startup adjustment rests with the party making the claim. Here, Roldan failed to demonstrate that the renovated rolling and pickling mills constituted ''new production facilities'' within the meaning of section 773(f)(1)(C) of the Act. Because Roldan has not shown that it meets the first part of the statutory requirement for a startup cost adjustment, consistent with our past practice, we have not addressed issues surrounding whether the company's production levels were limited during the POI by technical factors associated with the initial phases of commercial production. *See Notice of Final Results of Sales at Less Than Fair Value: Collated Roofing Nails from Korea,* 62 FR 51,420, 51, 426 (October 1, 1997) (where the Department did not address technical factors associated with respondents' claimed startup operations because the operations did not constitute a new production facility within the meaning of the statute). Similarly, we have not addressed the startup period claimed by Roldan as part of its request for a startup adjustment.

Comment 7: Including Inventory Write-Downs in COP and CV

As a result of Roldan's 1996 startup of the refurbished rolling mill and pickling facility, the year-end inventory values, as recorded in Roldan's inventory account, were in excess of market value. Thus, in accordance with Spanish generally accepted accounting principles (GAAP), Roldan wrote the book value of its finished goods inventory down to market value at the end of 1996. Roldan calculated COP and CV by reducing SSWR production costs by the portion of the inventory write-down allocated to SSWR.

Petitioners urge the Department not only to disallow this reduction, but also to add the inventory write-down to COP and CV. According to petitioners, reducing production costs by the inventory write-down (1) understates actual production costs; (2) obviates any finding of sales below cost by reducing actual costs to sales value; and (3) double counts the adjustment for startup costs. Petitioners, citing the SAA at 835 and the instructions in section D of the Department's antidumping questionnaire, note that the Department requires respondents to report the actual costs incurred in producing and selling the product under investigation. Petitioners maintain that the inventory value of SSWR before the write-down reflects the actual costs incurred to produce SSWR and, thus, Roldan should not have reduced reported costs by the write-down. Moreover, petitioners claim that writing down inventory values to market value shows that Roldan's sales prices are below cost. However, petitioners state that the Department would not find sales to be below cost if Roldan were allowed to report production costs that were reduced by the inventory write-down. Furthermore, petitioners note that Roldan already reduced reported costs under the provision for startup operations in section 773(f)(1)(C) of the Act. Thus, petitioners argue, that reducing reported costs by an inventory write-down necessitated by startup operations, double counts the startup adjustment and understates actual production costs. Rather than subtracting the write-down from reported costs, petitioners contend the write-down should be added to COP and CV. Petitioners note that the SAA at 834 states that ''Commerce normally will calculate costs on the basis of records kept by the exporter or producer of the merchandise provided such records are kept in accordance with generally accepted accounting principles of the exporting (or producing) country and reasonably reflect the costs associated with the production and sale of the merchandise.'' According to petitioners, Roldan recognized and recorded the inventory write-down as an expense in its accounting records. Petitioners also note that this write-down was recognized during the POI and recorded in Roldan's financial statements in accordance with Spanish GAAP. Therefore, petitioners request that the Department increase COP and CV by the amount of the inventory write-down.

Roldan holds that its inventory write-down should not be added to COP or CV because the write-down did not reflect actual costs but was merely an accounting entry that resulted from its conservative allocation of startup expenses. Furthermore, Roldan contests petitioners' claim that its inventory write-down constitutes recognition that its sales are below cost because, according to Roldan, the record in this investigation shows that its sales are above cost. Accordingly, Roldan requests that the Department exclude the inventory write-down from COP and CV in the final determination.

DOC Position: We agree with both petitioners and Roldan in part. The finished goods inventory write-down should not be added to production costs in calculating COP or CV because it is not a cost of production. Roldan records the cost of manufacturing finished products in its finished goods inventory account. At the end of 1996, the cost of finished products recorded in Roldan's inventory account exceeded the market value of those products. In accordance with Spanish GAAP, Roldan reduced the value of its finished goods inventory to market value in order to recognize the fact that the future revenue-producing ability of the inventory was no longer as great as its cost. Roldan recorded this reduction in future revenue-producing ability as a loss in its 1996 profit and loss statement. Although Roldan had not realized this loss, the conservative nature of accounting requires the loss to be recognized when the value of inventory exceeds market value, rather than in the period in which the inventory is sold. Thus, Roldan's inventory write-down is an accounting provision, not an actual production cost. In *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, 2117 (January 15, 1997) (*AFBs*), the respondents recognized inventory write-downs similar to Roldan's and the Department excluded the respondents' inventory write-downs from COP and CV, noting:

The inventory write-down these respondents reported are not actual costs but are a provisional reduction in inventory value in anticipation of a lower resale value * * * {The write-downs} are not realized expenses but simply a contingent reduction in how much revenue the companies expect to make from the sale of the merchandise. Since these particular inventory write-downs are not a realized expense, and are not reflected in their accounting of costs of goods in inventory, we have not included them in the calculation of COP and CV.

Therefore, in the final determination, consistent with our approach in *AFBs,* we did not add Roldan's inventory write-down to production costs, as suggested by petitioners.

For similar reasons, in the final determination, we also disallowed Roldan's reduction of reported production costs by the inventory write-down. Roldan's inventory write-down is an adjustment to inventory value, and, ultimately, cost of goods sold, not production costs. As noted above, Roldan's inventory write-down reflects a decline in the future revenue-producing ability of the inventory, not a reduction in production costs. Thus, reducing production costs by the inventory write-down would understate the actual costs incurred to produce SSWR.

Comment 8: Including Write-Offs of Idle Assets in COP and CV

During the POI, Roldan permanently ceased using its melt shop. In its accounting records, Roldan wrote off the melt shop assets and its inventory of spare parts for the shop, but excluded the write-offs from COP and CV because they claimed they were extraordinary costs that did not relate to SSWR production. Petitioners maintain the melt shop assets related to SSWR production and, thus, in accordance with Department policy, the write-offs associated with these assets should be included in COP and CV. To support their position, petitioners argue that the Department, in *Certain Hot-Rolled Lead Bismuth and Carbon Steel Products From the United Kingdom: Final Results of Antidumping Duty Administrative Review,* 63 FR 18,879, 18,882 (April 16, 1998) (*Bismuth*), included the closure costs associated with productive assets in the reported general and administrative (G&A) expenses. Moreover, petitioners argue that recognizing these write-offs for purposes of the antidumping investigation is consistent with Roldan's recognition of the write-offs in its accounting records.

Roldan argues that the write-offs of its melt shop assets and related spare parts should be excluded from reported costs because the write-offs are merely accounting adjustments which expense the value of the assets, but do not record actual production costs. According to Roldan, it could not claim these write-offs as production costs because the assets were no longer used in production. Even if the write-offs were included in SSWR production costs, Roldan claims the effect on costs would be minimal because the assets were only used during a small portion of the POI and they were primarily used to produce merchandise not subject to this investigation. Roldan also maintains that petitioners' reliance on *Bismuth* is misplaced because Roldan did not incur any costs in closing its melt shop. Therefore, Roldan urges the Department to exclude the write-offs from COP and CV in the final determination.

DOC Position: We agree with petitioners and have included Roldan's write-offs of permanently idled assets and related spare parts in COP and CV in accordance with our past practice (*see Notice of Final Results of Antidumping Duty Administrative Review: Extruded Rubber Thread From Malaysia,* 61 FR 54,767, 54,772 (October 22, 1996) (*Extruded Rubber Thread*). In *Extruded Rubber Thread,* the Department stated :

There is nothing unusual about a company's writing off manufacturing plants or equipment. Accordingly, we do not consider write-offs to be a type of extraordinary expense that we exclude from the cost of producing subject merchandise. The Department has in the past included similar equipment write-offs in the calculation of COP and CV.

Consistent with our past practice, we have also included the write-off of spare parts in COP and CV in the final determination. *See Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Singapore,* 52 FR 44,190, 44,196 (November 18, 1987), wherein the Department included write-offs of obsolete parts in the COP noting that ''obsolete parts are expenses incurred in normal operations which must be absorbed by current production.''

Roldan's inventory of spare parts for the permanently idled assets became obsolete when the assets were written off. Because these parts were related to production and their cost was expensed during the POI in Roldan's audited profit and loss statement, it is appropriate to include the cost of these spare parts in COP and CV.

Comment 9: Reducing General and Administrative Expenses by Foreign Exchange Gains

At verification, the Department found that Roldan's 1996 foreign currency exchange gains related solely to accounts receivable. According to petitioners, in the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy,* 62 FR 30,326, 30,359–60 (June 4, 1996), the Department stated that it does not include foreign currency exchange gains and loses in COP and CV when those gains and losses relate to accounts receivable. Therefore, petitioners contend that in the final determination the Department should exclude such foreign currency exchange gains from Roldan's G&A expenses.

Roldan asserts that petitioners' request is unnecessary because the record shows it did not include foreign currency exchange gains related to accounts receivable in its reported G&A expenses.

DOC Position: We agree with Roldan. The Department found no evidence at verification that Roldan reduced its reported G&A expenses by foreign currency exchange gains related to accounts receivable. Therefore, we have not increased reported G&A expenses by Roldan's foreign currency exchange gains as requested by petitioners.

Comment 10: Including the Parent Company's General Expenses in Reported Costs

Petitioners contend that the reported G&A expenses should have included an amount for the administrative services Roldan's parent company, Acerinox, S.A., performed on behalf of Roldan.

Roldan maintains it paid for all the services that Acerinox, S.A. performed on its behalf and included these payments in its reported general expenses. Thus, Roldan argues it would be inappropriate to increase reported G&A expenses by a portion of Acerinox, S.A.'s G&A expenses.

DOC Position: We agree with Roldan. The Department found evidence at verification that Roldan paid Acerinox, S.A. for the administrative services it performed on Roldan's behalf and included these payments in the reported G&A expenses (*see* the Cost Verification Report from Howard Smith and Peter Scholl to Holly Kuga, dated June 4, 1998, at page 41). Therefore, we did not include in addition, a portion of Acerinox, S.A.'s expenses in the reported G&A expenses.

Comment 11: Corrections Found at Verification

Petitioners state that the Department should revise Roldan's reported data in order to correct the errors which were discovered at verification. Roldan did not comment on this topic.

DOC Position: We agree with petitioners and have corrected the errors found at verification. For a list of these corrections, see the ''Constructed Export Price'' and ''Normal Value'' sections of this notice.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of SSWR from Spain that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Roldan, S.A	4.72
All Others	4.72

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 777(i) of the Act.

Dated: July 20, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–20016 Filed 7–28–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

(A–580–829)

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Korea

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

EFFECTIVE DATE: July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Cameron Werker or Frank Thomson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–5254, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Final Determination

We determine that stainless steel wire rod (SSWR) from Korea is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

The preliminary determination in this investigation was issued on February 25, 1998. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod from Korea*, 63 FR 10825 (March 5, 1998) (*Preliminary Determination*). Since the preliminary determination, the following events have occurred:

In March 1998, we issued supplemental questionnaires to and received responses from three respondents in this case, Changwon Specialty Steel Co., Ltd. (Changwon), Dongbang Special Steel Co., Ltd. (Dongbang), and Pohang Iron and Steel Co., Ltd. (POSCO).

In April 1998, we verified the sales and cost questionnaire responses of these three companies. In June 1998, Changwon submitted a revised U.S. sales database at the Department's request.

The petitioners (*i.e.*, AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., and the United Steel Workers of America, AFL-CIO/CLC) and the respondents submitted case briefs on June 5, 1998, and rebuttal briefs on June 10, 1998. At the request of all parties, the public hearing scheduled for June 11, 1998, was canceled.

Scope of Investigation

For purposes of this investigation, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of the investigation. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon	0.05 max.
Manganese	2.00 max.
Phosphorous	0.05 max.
Sulfur	0.15 max.
Silicon	1.00 max.
Chromium	19.00/21.00
Molybdenum	1.50/2.50
Lead	added (0.10/0.30)
Tellurium	added (0.03 min)

K–M35FL

Carbon	0.015 max.
Silicon	0.70/1.00
Manganese	0.40 max.
Phosphorous	0.04 max.
Sulfur	0.03 max.
Nickel	0.30 max.
Chromium	12.50/14.00
Lead	0.10/0.30
Aluminum	0.20/0.35

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1996, through June 30, 1997.

Affiliation and Collapsing of Respondents

For the reasons stated in the *Preliminary Determination*, we have continued to collapse POSCO and Changwon as affiliated producers in accordance with section 351.401(f) of our regulations. Furthermore, as stated in the *Preliminary Determination*, we examined more closely at verification the issue of affiliation between POSCO/Changwon and Dongbang, particularly with respect to the factors surrounding a close supplier relationship between the entities. As a result of our analysis, we determined that these companies are affiliated within the meaning of section 771(33)(G) of the Act and section 351.102(b) of the Department's regulations through a close supplier relationship in which POSCO/Changwon is operationally in a position to exercise restraint or direction over Dongbang. Moreover, we found that these producers have production facilities for identical or similar products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and that there is significant potential for the manipulation of price and production. Therefore, in accordance with section 351.401(f) of our regulations, we collapsed POSCO/Changwon and Dongbang as a single entity for purposes of our final dumping analysis. For further discussion, see *POSCO Comment 2* in the ''Interested Party Comments'' section of this notice. We note that prior to collapsing these entities, it was necessary to make certain adjustments to each of the individual companies' submitted data, based on verification findings and our positions discussed in this notice. These adjustments are discussed below in the appropriate sections of this notice.

Fair Value Comparisons

To determine whether sales of SSWR from Korea to the United States were made at less than fair value, we compared the Export Price (EP) to the Normal Value (NV). Our calculations followed the methodologies described in the preliminary determination, except as noted below and in company-specific analysis memoranda dated July 20, 1998.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 133 F.3d 897 (Fed Cir.1998). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Investigation'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

We made product comparisons based on the same characteristics and in the same general manner as that outlined in the preliminary determination. As in the preliminary determination, in instances where a respondent has reported a non-AISI grade (or an internal grade code) for a product that falls within an AISI category, we have used the actual AISI grade rather than the non-AISI grade reported by the respondents for purposes of our analysis. In instances where the chemical content ranges of a reported non-AISI grade (or an internal grade code) are outside the parameters of an AISI grade, we have used the internal grade code reported by the respondents for analysis purposes. However, in instances in which an internal grade matches all the specified chemical content tolerance ranges of an AISI grade, but the internal grade also contains amounts of chemicals that are not otherwise specified as being included in the standard AISI designation, we have used the corresponding AISI grade rather than the internal grade. For further discussion, see *General Comment 1* in the ''Interested Party Comments'' section of this notice.

In addition, since we have determined that Dongbang, Changwon, and POSCO comprise one entity for this final determination, consistent with *Certain Cold-Rolled and Corrosion-Resistant Carbon Flat Products from Korea*, 62 FR 18417 (April 15, 1997) (*1997 Flat Products from Korea)*, we have treated any sales made between the parties comprising the single entity as intra-company transfers, and have disregarded them from our analysis accordingly.

Export Price

We used EP methodology as defined in section 772(a) of the Act. *See Changwon Comment 4* in the ''Interested Party Comments'' section of this notice for a discussion regarding the classification of U.S. sales reported by Changwon. We calculated EP based on the same methodology used in the preliminary determination, with the following exceptions:

A. Data Reported by Changwon

1. We corrected for certain clerical errors found during verification with respect to: 1) the ocean freight expense for six U.S. sales and 2) the packing costs for the export (Hessian) packing type.

2. We recalculated duty drawback based on rebates which had actually been received by Changwon, as explained in *Changwon Comment 6* in the ''Interested Party Comments'' section of this notice.

B. Data Reported by Dongbang

1. In accordance with the Department's position in *General Comment 1* in the ''Interested Party Comments'' section of this notice, we reclassified internal grade XM–7 as AISI grade 302, given that the chemical content tolerances for grade XM–7 fell within those for AISI grade 302.

2. We corrected for clerical errors found during verification regarding the actual bank charges for seven U.S. sales.

3. We corrected for errors in Dongbang's brokerage charges, as explained in *Dongbang Comment 8* in the ''Interested Party Comments'' section of this notice.

Normal Value

We used the same methodology to calculate NV as that described in the preliminary determination, with the following exceptions:

A. Data Reported by Changwon

1. In accordance with the Department's position in *General Comment 1* in the ''Interested Party Comments'' section of this notice, we reclassified internal grades SUS 304HC and AISI 304HC as AISI grade 304, given that the content tolerances for

grades SUS 304HC and AISI 304HC fell within those for AISI grade 304.

2. We corrected for certain clerical errors found during verification with respect to: (1) the average credit period (*i.e.,* accounts receivable turnover period) for seven home market customers, (2) the warranty expense for one home market sale, and (3) the packing costs for domestic (Hessian) and domestic (Bare) types of home market packing.

3. We recalculated duty drawback for home market local sales (*i.e.,* domestic sales to customers who consume the merchandise in Korea in the production of finished goods for export, the destination of which is unknown to Changwon at the time of sale) based on rebates which had actually been received by Changwon, as explained in *Changwon Comment 6* in the ''Interested Party Comments'' section of this notice.

B. Data Reported by Dongbang

1. In accordance with the Department's position in *General Comment 1* in the ''Interested Party Comments'' section of this notice, we reclassified internal grade XM–7 as AISI grade 302, given that the chemical content tolerances for grade XM–7 fell within those for AISI grade 302.

2. We corrected for certain clerical errors found during verification, including (1) the date of payment for three home market local sales, (2) the average credit period for one home market customer, and (3) the interest revenue for three home market customers and the interest revenue ratio applicable to three other home market sales.

Cost of Production

Before making any fair value comparisons, we conducted the cost of production (COP) analysis for the reasons stated in the *Preliminary Determination*. Based on our decision to collapse POSCO, Changwon, and Dongbang as a single entity, we calculated the weighted-average COP, by model, based on the sum of each respondent's cost of materials and fabrication for the foreign like product at the level in which each respondent was responsible for manufacturing operations. In addition, we included amounts for home market selling, general, and administrative (SG&A) expenses for each company involved in the manufacture of each given product, and packing costs in accordance with section 773(b)(3) of the Act. We relied on the submitted COPs except in the following specific instances where the submitted costs were not appropriately quantified or valued:

A. Data Reported by Changwon

1. As stated above, we computed the weighted-average COP, by model, based on the sum of each respondent's cost of materials and fabrication for the foreign like product at the level in which each respondent was responsible for manufacturing operations. Therefore, for products produced by Changwon which included material inputs from POSCO, the COP was calculated by adding POSCO's applicable cost of manufacturing (COM) and general expenses to Changwon's applicable costs.

2. In accordance with the Department's position in *General Comment 1* in the ''Interested Party Comments'' section of this notice, we reclassified internal grades SUS 304HC and AISI 304HC as AISI grade 304 given that the chemical content tolerances for grades SUS 304HC and AISI 304HC fell within those for AISI grade 304.

3. As stated in *Changwon Comment 2* in the ''Interested Party Comments'' section of this notice, we increased Changwon's reported indirect selling expenses by the unreported recognized bad debt expenses. We also increased Changwon's reported general and administrative (G&A) expenses for foundation, business start-up, and stock issuance expenses.

4. We used G&A and interest expense data from POSCO's 1996 financial statements and G&A expense data from Changwon's 1997 financial statements in the calculation of COP. *See Changwon Comment 3* in the ''Interested Party Comments'' section of this notice.

B. Data Reported by Dongbang

1. As stated above, we computed the weighted-average COP, by model, based on the sum of each respondents' cost of materials and fabrication for the foreign like product at the level in which each respondent was responsible for manufacturing operations. Therefore, for products produced by Dongbang which included material inputs from POSCO, the COP was calculated by adding POSCO's applicable COM and general expenses to Dongbang's applicable costs. In attempting to merge the cost data provided by POSCO and Dongbang for COP calculation purposes, we found that for three steel grades sold by Dongbang and POSCO with the same internal codes, the chemical specifications were slightly different. Company officials stated at verification that Dongbang's internal grade codes are the same as POSCO's for reasons of efficiency in ordering and production (*see* Memorandum for Holly Kuga from Cameron Werker and Frank Thomson Re: Verification of the Responses of Dongbang Special Steel Co., Ltd. in the Antidumping Duty Investigations of Stainless Steel Wire Rod from the Republic of Korea, dated May 29, 1998 at page 5). Therefore, in order to assign the POSCO cost portion of the COP of these three products, we applied facts otherwise available in accordance with section 776(a) of the Act. As facts available, we used POSCO's reported costs for the same internal grade code (*see Sales, Cost of Production (''COP''), and Constructed Value (''CV'') Adjustment Calculations in the Final Determination of Stainless Steel Wire Rod from the Republic of Korea—Changwon Specialty Steel Co., Ltd., Dongbang Special Steel Co., Ltd., and Pohang Iron and Steel Co., Ltd. (POSCO),* dated July 20, 1998) (*Final Determination Calculation Memorandum*).

2. In accordance with the Department's position in *General Comment 1* in the ''Interested Party Comments'' section of this notice, we reclassified internal grade XM–7 as AISI grade 302 given that the chemical content tolerances for grade XM–7 fell within those for AISI grade 302.

3. As stated in *Dongbang Comments 3 and 4* in the ''Interested Party Comments'' section of this notice, we increased Dongbang's G&A expenses for recognized net foreign exchange losses related to accounts except accounts receivable, and excluded from Dongbang's G&A calculation the disputed reversal of bad debt allowance.

We conducted our sales-below-cost test in the same general manner as that described in our preliminary determination. However, for purposes of the final determination, given that we collapsed POSCO/Changwon and Dongbang, the sales-below-cost test was conducted on Changwon's and Dongbang's home market sales on a consolidated basis. As in the preliminary determination, we did not include POSCO's home market sales of black coil for product comparison purposes, and, therefore, these sales were excluded from the sales-below-cost test.

We found that, for certain models of SSWR, more than 20 percent of Dongbang's and Changwon's home market sales within an extended period of time were at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1). For those U.S. sales of SSWR for which there were no comparable home market sales in the ordinary course of trade, we compared EPs to CV in accordance with section 773(a)(4) of the Act.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondents' cost of materials and fabrication for the U.S. products at the level in which each respondent was responsible for manufacturing operations. We also included appropriate amounts for G&A expenses, U.S. packing costs, direct and indirect selling expenses, interest expenses, and profit. We relied on the submitted CVs except for specific changes described above in the ''Cost of Production'' section. In addition, for Dongbang, in accordance with the Department's position in *General Comment 1* in the ''Interested Party Comments'' section of this notice, we have reclassified internal grade XM–7 as AISI grade 302 given that the chemical content tolerances for grade XM–7 fell within those for AISI grade 302.

Price-to-Price Comparisons

We made price-to-price comparisons using the same methodology as that described in the preliminary determination.

Price-to-CV Comparisons

We made price-to-CV comparisons using the same methodology as that described in the preliminary determination.

Currency Conversion

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank in accordance with Section 773A of the Act.

Interested Party Comments

General

Comment 1: Product Codes

Petitioners state that the Department should ensure that all product codes designated by respondents correspond to standard AISI codes for matching purposes. Petitioners maintain that respondents should not be permitted to rely on internal grade designations for products that would otherwise fit within a standard AISI grade simply because they have added small amounts of chemicals (*e.g.,* copper or molybdenum) that are not otherwise specified as being included in the standard AISI grade designation.

Petitioners urge the Department to ensure that all internal product codes designated by the respondents in their questionnaire responses correspond to a standard AISI code for matching purposes. Otherwise, the petitioners assert, the methodology of relying on internal grade designations for products that are only sold in the home market impermissibly allows respondents to exclude certain high-priced sales in the home market from the model match process simply by giving selected internal grade designations a special code in the model match process that would never then be compared to a U.S. sale of a similar product with a different grade code.

Changwon and Dongbang argue that if an internal grade does not fall within the chemical content ranges of an AISI grade, there is no basis to conclude that the merchandise within the internal grade has similar component materials, commercial value, or uses as the merchandise within an AISI grade. Changwon and Dongbang state that petitioners' argument is unreasonable and speculative. Changwon and Dongbang state that the Department should continue to apply its model match methodology from the *Preliminary Determination.*

DOC Position

We agree with both petitioners and respondents, in part. We agree with respondents regarding the designation of internal grade codes for model matching purposes. As in the preliminary determination, we have continued to utilize a methodology in which we reclassified any internal grade code as an AISI grade if it fell within the chemical content tolerance ranges provided by internationally-accepted standards. In instances in which the properties of an internal grade did not match the specified chemical content tolerance ranges of any AISI grade, we have continued to recognize the internal grade as the appropriate grade for product comparison purposes.

However, we also agree with petitioners that in instances in which an internal grade matches all the specified chemical content tolerance ranges of an AISI grade, but that the internal grade also contains amounts of chemicals (*e.g.,* copper or molybdenum) that are not otherwise specified as being included in the standard AISI designation, it is appropriate to classify the internal grade as the AISI grade. Therefore, we have reclassified all such internal grades as AISI grades accordingly. *See Final Determination Calculation Memorandum*) for further discussion of the models that were reclassified.

POSCO

Comment 1: POSCO's Cost Verification

Petitioners argue that it is clear from the record that POSCO failed its cost verification because the Department was unable to verify POSCO's cost of production submissions. Specifically, petitioners maintain that POSCO officials deliberately withheld POSCO's actual trial balance with account codes from the verification team. Petitioners interpret the cost verification report to mean that POSCO company officials denied the existence of a trial balance which contained account codes when one was requested by the verification team. Petitioners maintain that the verification team learned from POSCO's independent auditors that such a trial balance did exist. Petitioners further maintain that POSCO's failure to provide a proper trial balance prevented the Department from reconciling POSCO's overall costs and also prevented the Department from verifying the cost information submitted by POSCO. Petitioners state that POSCO's failure to present usable 1996 and 1997 trial balances to reconcile POI COM costs, as requested by the Department, forced the Department to review instead the inventory ledger and attempt to reconcile it to the COM for the POI. As a result, petitioners assert that POSCO failed its cost verification. Petitioners argue that POSCO's decision not to cooperate with the verification team means that POSCO withheld information requested by the Department, and failed to provide information in the form and manner requested, with the result that POSCO significantly impeded the proceeding.

Petitioners further argue that because POSCO failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department should use an adverse inference in determining the facts available for POSCO's unverified cost information. Petitioners cite several cases in which the Department has resorted to total adverse facts available when the Department was unable to verify costs and other significant information (*e.g., Certain Welded Carbon Steel Pipes and Tubes from Thailand* (62 FR 53808, October 16, 1997) and *Certain Cut-to-Length Carbon Steel Plate from Sweden* (62 FR 18396, April 15, 1997)).

Furthermore, petitioners maintain that because Changwon, POSCO's wholly-owned subsidiary, and POSCO are collapsed for sales and margin purposes for this investigation, and because POSCO failed verification, the combined POSCO/Changwon entity has failed verification and, therefore, total adverse facts available should be applied to the combined entity.

In the alternative, petitioners argue that if the Department does not collapse Changwon and POSCO for the final determination, as a surrogate for POSCO's COP, the Department should choose the higher of the following two measures: (1) The total of the highest amounts paid by Changwon for each element in its COP for subject merchandise, or (2) the highest NV from the petition.

Moreover, if the Department determines that POSCO and Changwon should not be collapsed, petitioners maintain that the Department should apply the ''major input'' rule and the ''transactions disregarded'' rule to the transfers between POSCO and Changwon, using the higher of the two surrogates described above as a proxy for POSCO's COP and then comparing that proxy with the market price and the transfer price to determine which is higher. Moreover, petitioners contend that because black coil is within the scope of this investigation, the prices for transfers of black coil from POSCO to Changwon should be subject to the arm's-length test.

Changwon and POSCO (Changwon/POSCO) jointly state that the Department has fully verified the actual COM inputs transferred from POSCO to Changwon. Changwon/POSCO claim that, while the Department's cost verification report asserts that the Department was unable to reconcile the trial balance to the audited financial statements in the manner it originally intended, the report indicates that the Department successfully reconciled the trial balance to the audited financial statements. Specifically, Changwon/POSCO state that POSCO initially provided the Department with its trial balance (without account codes) maintained in the ordinary course of business. At the Department's request, POSCO also created a trial balance that contained account codes. The Department examined the trial balance, compared it to the trial balance used by POSCO's auditors, and confirmed that the trial balance reconciled to the audited financial statements.

Changwon/POSCO next address the section of the cost verification report that states that POSCO officials did not provide either a reconciliation from the cost accounting system to the costs recorded in the trial balance, or schedules showing the activity for each home base product group (HBPV) (also called home base product value), *i.e.*, the beginning balance, the current period's manufacturing costs, the value of the product removed from inventory, and the ending balances of the HBPG. Changwon/POSCO disagree, stating that POSCO did provide a reconciliation of the costs recorded in POSCO's cost accounting system and the audited financial statements, and that the trial balance likewise reconciles to the costs recorded in the cost accounting system. Changwon/POSCO add that POSCO did not provide separate schedules showing the activity for each HBPG but, as is described in the verification report, all of the requested information was available directly from the inventory ledgers themselves.

Changwon/POSCO assert that the Department fully verified the reported control number-specific costs by successfully reconciling the representative product group values used to calculate the control number-specific costs to the corresponding HBPG's, and reconciling these values to the audited financial statements. Changwon/POSCO state that this is demonstrated in the Department's verification report.

Furthermore, Changwon/POSCO refute petitioners argument that the Department was unable to perform an overall reconciliation, asserting that nowhere in the verification report does the Department indicate that POSCO's reported costs could not be traced to the costs recorded in POSCO's financial and cost accounting systems.

Changwon/POSCO assert that POSCO has cooperated fully with the Department and that, contrary to petitioners' allegations, POSCO has been fully responsive to the Department's requests for information. Changwon/POSCO also state that POSCO did not withhold documents from the Department at the cost verification and argue that the cost verification report confirms this fact.

Changwon/POSCO maintain that, if the Department were to find that it was dissatisfied with POSCO's reconciliation of its reported costs, application of total adverse facts available to the collapsed entity would be unwarranted. Changwon/POSCO contend that the Department may only apply total facts available to a respondent if it finds that the entire response is no longer usable, which according to respondents, is not the case in this situation. Changwon/POSCO argue that if the Department were to make an adjustment to POSCO's reported costs, it would be confined to modifying the adjustment factor applied to Changwon's COM.

Finally, Changwon/POSCO maintain that the cases cited by petitioners in support of their argument for adverse facts available are irrelevant in this case because the Department has fully verified POSCO's submitted costs and the facts of those cases are totally distinguishable from those in this case.

DOC Position

We disagree with petitioners. POSCO did not fail its cost verification, as we were able to successfully verify POSCO's COP submissions. Contrary to petitioners' interpretation of the cost verification report, we do not agree that POSCO's failure to provide a trial balance with account codes prevented the Department from reconciling POSCO's overall costs and that it also prevented the Department from verifying the cost information submitted by POSCO. Upon request, POSCO provided two separate trial balances; one with account codes and one with account names. The trail balance with only account names was maintained in the ordinary course of business. The balances on these two trial balances were equal and reconciled to the financial statements. We also do not agree with petitioners that POSCO failed to cooperate with the Department in a manner that significantly impeded the verification proceeding. In fact, we were able to perform several additional procedures, including a reconciliation of the inventory ledger, from which the reported per-unit costs were derived, to the financial statements. *See* Memorandum from Michael Martin and Cameron Werker to Irene Darzenta Re: Verification Report on the Cost of Production and Major Input Cost Data submitted by Pohang Iron and Steel Co., Ltd. Therefore, we have accepted POSCO's reported cost information for purposes of this final determination. Regarding the portion of petitioners argument pertaining to collapsing of POSCO and Changwon, see *POSCO Comment 2* in the ''Interested Party Comments'' section of this notice.

Comment 2: Affiliation between POSCO and Dongbang

Petitioners claim that the relationship between Dongbang and POSCO satisfies all of the statutory and regulatory requirements necessary for the Department to find that these two companies are affiliated. Petitioners cite section 771(33)(G) of the Act, which states that ''a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.'' Petitioners note that actual restraint or direction need not have been exercised in a relationship, only that one person is ''in a position'' to exercise restraint or direction over another. Petitioners further state that section 351.102(b) of the Department's regulations states that the Department will not find control based on factors such as the existence of franchise or joint venture agreements, debt financing, and close supplier relationships in determining the existence of control ''unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.'' Petitioners stress that the potential impact on the decision-making process is the key criterion, not actual exercise of that potential.

Petitioners argue that POSCO exercises control over Dongbang primarily through a close buyer-supplier relationship. Petitioners state that in *Open-End Spun Rayon Singles Yarn from Austria* (62 FR 43707, August 15, 1997) (*Yarn from Austria*), the Department focused on a ''majority of sales'' rule in determining whether a close supplier relationship existed, not whether the supplier could be replaced. Petitioners maintain that the POSCO/ Changwon collapsed entity is a supplier of Dongbang's input and has the ability to control Dongbang by threatening to slow or stop deliveries, threatening to increase prices, or actually taking these steps. Petitioners argue that the Department's verification confirmed the cohesive nature of the buyer-supplier relationship between POSCO and Dongbang. Specifically, petitioners state that POSCO's recent decision to stop production of black coil has no effect on this relationship given that Changwon, which is collapsed with POSCO, ''assumed the responsibility of producing black coil for the POSCO Group.'' Moreover, petitioners state, POSCO/Changwon's status as the only supplier of black coil in Korea enhances its control of Dongbang. Petitioners assert that as a result of the level of control POSCO maintains over Dongbang, the two companies must be deemed affiliated parties.

In addition to the close supplier relationship, petitioners argue that a variety of other indicia of control, when considered cumulatively, demonstrate that POSCO controls Dongbang. For example, petitioners contend POSCO may exercise indirect control of more than five percent of the voting stock of Dongbang through POSCO's relationship with POSTECH. Petitioners also state that POSCO's interlocking directorate scheme with POSTECH, donations to POSTECH, their co-location, and other indicia of control add overwhelming evidence of POSCO's effective, albeit extralegal, control of Dongbang.

Petitioners further argue that the Department's regulations and past cases demonstrate that more than one company can exercise control over another and, thus, Dongbang's membership in the Dongbang group does not preclude POSCO from exercising control over Dongbang (*see Welded Carbon Steel Pipes and Tubes from Thailand* (62 FR 53814, October 16, 1997)).

Petitioners also argue that because POSCO and Dongbang are affiliates, the Department should invoke the major input rule in evaluating the sale of black coil, which is the foreign like product, from POSCO to Dongbang.

In determining whether two parties are affiliated based on a buyer-supplier relationship, Dongbang argues that the Department must find that one of the parties is in fact reliant upon the other, as stated in the Statement of Administrative Action (SAA). Dongbang further argues that section 351.102(b) of the Department's regulations indicates that one of the parties must have the ''potential to impact the other party's decisions concerning production, pricing, or cost of the subject merchandise.'' Dongbang maintains that the term ''potential'' indicates that not only must there be a possibility that a party will exert control over the other party, but that there is an inherent likelihood that control could be exerted. Citing *1997 Flat Products from Korea*, Dongbang asserts that the Department must find significant indicia of control and the standard is not whether one company might be in a position to become reliant upon another by means of a supplier-buyer relationship, but that the buyer has, in fact, become reliant upon the seller, or *vice versa*. As a result, Dongbang maintains that only after an initial finding that a buyer or supplier has become reliant upon the other can the Department examine whether a realistic potential for control, whereby one of the parties is in a position to exercise restraint or control over the other, exists based upon that actual reliance.

Dongbang maintains that the fact that petitioners were unable to cite a single case in which the Department found that a buyer-supplier relationship constituted sufficient potential control to support a finding of affiliation, confirms that the Department is applying the buyer-supplier relationship provision cautiously to stay mindful of the commercial and business realities of the marketplace. Dongbang maintains that even though the Department indicated in *Yarn from Austria* that a close buyer-supplier relationship may occur if a majority of a supplier's sales are to one customer, the Department determined that the existence of this situation does not alone support the finding of affiliation. Likewise, Dongbang notes that in *Furfuryl Alcohol from the Republic of South Africa*, 62 FR 61086 (November 14, 1997) (*Furfuryl Alcohol from South Africa*), the Department determined that the fact that there was only one manufacturer of the subject merchandise in South Africa was insufficient to find that the manufacturer and its customers were affiliated.

In this instance, Dongbang argues that there is no evidence on the record that Dongbang is reliant upon POSCO to the extent necessary to support an affiliation finding. Dongbang contends that petitioners have only speculated that it is possible that POSCO could control Dongbang through threats of stopping deliveries or increasing prices. However, Dongbang maintains that there is no evidence that POSCO could or has exerted such control. Dongbang further maintains that the record demonstrates that it has alternate sources of black coil, as black coil is a commodity product produced by numerous suppliers around the world. In addition, Dongbang asserts that there are no long-term supply contracts or exclusive relationship commitments between Dongbang and POSCO, nor is there evidence of any law or regulation prohibiting Dongbang from purchasing black coil from any source that it desires. Dongbang argues that this fact pattern led the Department to find that POSCO and Union were not affiliated in the *1997 Flat Products from Korea* case and that the same logic applies to the instant case.

Dongbang further states that petitioners have failed to present any evidence to contradict the proposition that Dongbang's purchases of a majority of its black coil requirements from POSCO was the result of POSCO's comparative advantages, location, product quality, and other circumstances, rather than a ''special control relationship between POSCO and Dongbang.'' Dongbang again cites *1997 Flat Products from Korea* where the Department reasoned that POSCO and Union were not affiliated despite a buyer-supplier relationship, in part because, it made commercial and business sense for Union to purchase from POSCO given POSCO's ''comparative advantages'' in the marketplace.

Moreover, Dongbang disputes petitioners' other allegations that POSCO controls Dongbang. First, Dongbang maintains that the evidence on the record shows that Dongbang is under the complete and effective control of the Dongbang Group. Dongbang argues that even if POSCO controls POSTECH, which Dongbang maintains it does not, POSTECH could not control Dongbang through its partial ownership of Dongbang given the Dongbang Group's majority ownership in Dongbang and thus its active control over Dongbang. In addition, Dongbang notes that the Department confirmed at verification that POSTECH's shares in Dongbang are non-voting. Therefore, Dongbang argues, the Dongbang Group's complete ownership of 100 percent of Dongbang's voting stock, coupled with its supervision over Dongbang's operations, precludes POSCO from having control over Dongbang.

Second, Dongbang maintains that POSCO does not control POSTECH. Among other things, Dongbang asserts that POSTECH is not part of POSCO's interlocking directorship. Furthermore, Dongbang notes that the Department found at verification that POSTECH's board of directors operates on a majority-rule basis and that, as a result, POSCO officials cannot unilaterally control POSTECH's decision-making. Lastly, Dongbang states that the Department found at verification that the revenue POSTECH earns from POSCO is comparable to its percentage of revenue from other companies.

Therefore, Dongbang argues that the Department should reject petitioners' argument that Dongbang and POSCO are affiliated parties.

DOC Position

We agree with petitioners and have considered POSCO and Changwon to be affiliated with Dongbang, within the meaning of section 771(33)(G) of the Act and section 351.102(b) of the Department's regulations, for purposes of the final determination. The Department has stated in past cases that the term ''affiliated parties,'' as defined in the preamble to our proposed regulations which states that ''business and economic reality suggest that these relationships must be significant and not easily replaced,'' suggests that the Department must find significant indicia of control (*see 1997 Korean Steel*). The Department has also stated that it may consider close supplier relationships as a sufficient basis for a finding of affiliation. *See Large Newspaper Printing Presses and Components Thereof from Japan*, 61 FR 38139 (July 23, 1996) (*LNPP*). Further, we stated in *LNPP* that the Department would make its affiliated party determinations after taking ''into account all factors which, by themselves, or in combination, may indicate affiliations.''

The facts on the record in the instant case are unlike past cases such as *Yarn from Austria*, *Furfuryl Alcohol from South Africa*, and *1997 Korean Steel*, in which the Department did not find enough evidence on the record to determine that the buyer had become reliant upon the seller, or *vice versa*, and therefore, did not find a close supplier relationship. In the instant case, we found that not only is POSCO/Changwon the sole supplier and Dongbang the sole Korean buyer of black coil (the major input in the production of finished SSWR), but that Dongbang, by its own admission, has been unable to develop an alternative source of supply of black coil. Thus, the business and economic reality is that the relationship between the parties is significant and, as demonstrated by evidence on the record, not easily replaced. Furthermore, as stated above, Dongbang's business operations are almost exclusively dependent on the production of finished SSWR.

The production processes performed by POSCO, Changwon, and Dongbang are also important in determining whether or not POSCO has control over Dongbang. POSCO has the facilities to produce SSWR from the beginning of the process through the black coil production stage. Changwon is a fully integrated SSWR producer that has the capability to produce SSWR from start to finish. Dongbang, on the other hand, only has the facilities to finish black coil (*i.e.*, can only perform annealing and pickling functions). If POSCO/Changwon were to cut off the supply of black coil to Dongbang, Dongbang would not be able to produce SSWR without alternative sources of supply, which do not seem to exist for Dongbang. POSCO/Changwon indeed has greater leverage over the production of SSWR due to the fact that it bears a portion of the costs of producing the SSWR and has the facilities to perform the necessary finishing activities upon the black coil.

Given the interdependent production operations of POSCO/Changwon and Dongbang and Dongbang's inability to obtain suitable black coil from alternative sources, it is reasonable to assume that Dongbang would suffer economic hardship if POSCO/Changwon ceased to supply black coil to Dongbang. In this instance, as opposed to the past cases cited by Dongbang, Dongbang is actually reliant on POSCO/Changwon such that POSCO/Changwon is in a position of control (*i.e.*, can operationally exercise restraint or direction) over Dongbang. Moreover, given the importance of black coil to the production of SSWR, the relationship in question has the potential to impact decisions concerning the production, pricing or cost of the subject merchandise or the foreign like product under investigation.

Based on our review of the record evidence, including our findings at verification, we have determined that POSCO/Changwon are affiliated with Dongbang through a close supplier relationship in which actual reliance exists such that POSCO/Changwon is in a position of control over Dongbang (*i.e.*, can exercise restraint or direction over Dongbang).

Given that we determined POSCO/Changwon and Dongbang share a close supply relationship and are, therefore, affiliated in accordance with section 771(33) of the Act and section 351.102(b) of the Department's regulations, we then analyzed the collapsing criteria enumerated in section 351.401(f) of the Department's regulations. Both POSCO/Changwon and Dongbang have production facilities (*i.e.*, similar finishing production equipment) which can produce identical or similar SSWR. The difference in SSWR production facilities between the two entities is essentially that Dongbang has the ability to anneal and pickle the black coil purchased from POSCO/Changwon to produce finished SSWR. POSCO/Changwon has the ability to perform all processes in the production of finished SSWR, including annealing and pickling. Because POSCO/Changwon has the capability and expertise to perform all processes in the production of finished SSWR and in fact already produces subject merchandise (*i.e.*, black coil and finished SSWR), we believe that the companies would not need to engage in major retooling to shift production of the subject merchandise from one company to another. Further, although the record of this investigation demonstrates that POSCO/Changwon do not have common ownership or share common interlocking officers or directors with Dongbang, the record does indicate that there is a significant potential for price or cost manipulation among these companies given their interdependent operations, as discussed above in the affiliation analysis section.

For these, we have determined it appropriate to collapse all three producers into one entity for purposes of our final analysis, in accordance with section 351.401(f) of the Department's regulation. For a full discussion, see the Memorandum from the Team to Holly Kuga regarding: ''Whether Pohang Iron and Steel Co., Ltd. (POSCO), and its subsidiary Changwon Specialty Steel Co., Ltd. (Changwon), are affiliated with Dongbang Special Steel Co., Ltd. (Dongbang). Whether to collapse Dongbang with the already collapsed entity POSCO/Changwon for antidumping analysis purposes,'' dated July 20, 1998.

Comment 3: POSCO's Costs of Production Used in Calculations for Changwon and Dongbang

Petitioners maintain that both Changwon and Dongbang purchased significant amounts of their input materials from POSCO. Petitioners state that Dongbang purchases all its black coil for the production of finished SSWR and that POSCO and its wholly-owned subsidiary, Changwon, supply Dongbang with this black coil. Furthermore, petitioners state that Changwon purchased blooms, billets, and black coil from POSCO. Petitioners maintain that these major inputs, especially black coil, account for the vast majority of the COP of finished SSWR. Petitioners argue that in light of the importance of the raw material inputs sourced from POSCO and the fact that the Department now lacks the ability to validate these input prices and costs (*see POSCO Comment 1* in the ''Interested Party Comments'' section of this notice), the Department should choose the higher of the two measures of facts available for POSCO's COP as described in *POSCO Comment 1* in the ''Interested Party Comments'' section of this notice.

DOC Position

We disagree with petitioners. As stated in the *DOC Position* to *POSCO Comment 1* in the ''Interested Party Comments'' section of this notice, POSCO did not fail its cost verification. Therefore, we have used POSCO's actual costs, as appropriate, for both Changwon and Dongbang, given that we have collapsed POSCO, Changwon, and Dongbang into one entity for final margin calculation purposes. *See also Changwon Comment 7* in the ''Interested Party Comments'' section of this notice for discussion of the inapplicability of the major input and fair value rules in this case.

Comment 4: Corrections to POSCO's Sales Database Based on Findings at Verification

Petitioners state that the Department should use the correct short-term interest rate found at verification. Petitioners also state that the Department should correct the amount of fees POSCO paid to outside research entities in 1997, as provided by POSCO at verification. Furthermore, petitioners contend that the Department should correct the misreported amounts for other revenue and total revenue for POSCO's 1996 Description of Revenue of POSTECH.

DOC Position

We have corrected all errors found at verification for purposes of the final determination and have considered them in our final analysis, where appropriate.

Dongbang

Comment 1: Accuracy of Dongbang's Cost Reporting

Dongbang maintains that the Department thoroughly verified and confirmed the accuracy of its reported cost information. Dongbang notes that the minor differences found by the Department between the reported per-unit costs and Dongbang's inventory values resulted from the fact that Dongbang's financial accounting system accounts for costs only by steel grade. Dongbang asserts that in order to develop control number-specific costs which accurately reflected the Department's product characteristics, it relied on source data used in preparing its financial statements. Dongbang maintains that the Department verified the accuracy of its methodology and therefore should use its reported data in the final determination.

Regarding the accuracy of Dongbang's reported cost information, petitioners note that the cost verification report states that the Department has not determined, as of the date of the report, whether the cost calculation methodologies used by Dongbang were appropriate. Petitioners further note that the cost verification report states that Dongbang allocated its fabrication costs using ''alternative allocation bases, rather than those used in its normal costs system.'' Petitioners maintain that Dongbang's deviations from its cost system were not necessitated by the questionnaire's requirement to provide control number-specific costs, but rather for self-serving purposes. Petitioners contend that the Department verified that Dongbang's new allocation methods effectively reduced the COMs for products examined. Therefore, given that Dongbang deviated from its normal cost accounting system without approval from the Department and without presenting information on the record to justify the deviation, petitioners argue that the Department should disallow Dongbang's submitted methodology for calculating its COP and CV. However, petitioners maintain that if the Department decides to use Dongbang's submitted costs, it should increase all reported COMs by the maximum percentage by which the Department found Dongbang's methodology reduced the COMs for products examined.

DOC Position

We agree with Dongbang. The Department fully verified the accuracy of Dongbang's cost reporting methodology. We found at verification that Dongbang's financial accounting system did not record costs at the level of detail requested by the Department. The Department has determined in several past cases that respondents can allocate costs to a more detailed product-specific level than their normal cost accounting methodology in order to report costs on a control number-specific basis, as required by the Department, provided that the methodology used is reasonable. *See, e.g., 1997 Flat Product from Korea and Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 63 FR 13170 (March 18, 1998) (*1998 Flat Products from Korea*).

Comment 2: Dongbang's Direct and Indirect Cost Allocation Methodology

Petitioners maintain that, as stated in the Department's cost verification report, Dongbang submitted a cost allocation methodology for its direct fabrication cost centers that deviates from its normal cost system. In addition, petitioners maintain that Dongbang's methodology for allocating indirect costs as submitted for this investigation also deviates from its normal cost accounting practices and therefore should be rejected. Specifically, petitioners argue that two specific indirect costs were allocated on the basis of direct cost amounts and depreciation costs for each cost center, rather than on the basis of production quantities, which is Dongbang's normal methodology. Petitioners argue that Dongbang has not placed information on the record to justify the deviation from the normal accounting methodology and that this selected methodology is inherently less precise than the use of production quantities. Petitioners state that the cost verification report shows that the Department found that the net effect of Dongbang's new allocation methods was that the reported COMs for the three products examined were lower than the values contained in Dongbang's inventory ledger.

As a result, petitioners argue that, while the Department should dismiss Dongbang's submitted COP and CV data in their entirety and that adverse facts available be applied (*see Dongbang Comment 1*), if the Department decides to use Dongbang's submitted costs, it should increase all reported COMs by a minimum of the highest percentage deviation found by the Department between the reported COMs and the values contained in Dongbang's inventory ledger.

Dongbang maintains that it did not unilaterally depart from its normal cost accounting system without fully informing the Department, and that it demonstrated that its normal methods were inaccurate for the Department's purposes. Dongbang maintains that it notified the Department in advance by telephone that it intended to deviate from its normal accounting system in order to report costs on a product-specific basis and described its reporting methodology in its questionnaire and supplemental questionnaire responses. Dongbang further states that the Department fully verified both the accuracy of Dongbang's costs and the reasonableness of its allocation methodologies.

Dongbang states that it relied on costs recorded in its normal cost accounting system, which accurately identifies and captures costs by production process, and only modified those costs in two instances in which Dongbang's cost accounting system is distortive for antidumping purposes. Dongbang maintains that the first aspect of the normal accounting system that was modified, *i.e.*, its methodology for allocating costs to specific products based on the Department's product comparison criteria, because its system does not account for differences in grade and diameter, was not disputed by petitioners. Dongbang states that petitioners' only dispute relates to Dongbang's reallocation of indirect costs to direct centers. Regarding the indirect costs in question, Dongbang states, as verified by the Department, that these indirect costs are normally allocated based on production quantities. However, Dongbang asserts also, as verified by the Department, that its cost system does not track production quantities at all direct cost centers, and as a result, the cost system does not allocate indirect costs to all cost centers. Dongbang argues that given that all direct cost centers benefit from the indirect costs in question, all the direct cost centers should bear a portion of these costs. However, Dongbang also argues that it would be distortive to allocate these indirect costs based on production quantities for all cost centers as not all cost centers incur the same costs, on a per metric ton basis, for the activities associated with the indirect costs in question. Dongbang notes that the allocation of these indirect costs based solely on production quantities fails to capture significant differences in production processes and results in the under-allocation of the indirect costs to specialty steel products.

Dongbang states that the indirect cost associated with a particular cost center identified by petitioners is only a very small portion of the total COM. Dongbang further states that the difference between Dongbang's cost accounting system and its reporting methodology for indirect costs for this cost center was very small and the impact on the total COM minimal. Dongbang argues that given that the Department has verified the accuracy and reasonableness of its accounting system, no adjustments are required or necessary.

DOC Position

We agree with Dongbang. Dongbang's financial accounting system does not record costs at the level of detail requested by the Department. As a result, Dongbang deviated from its normal accounting methodology in order to conform to the requests of the Department. Furthermore, Dongbang's questionnaire responses reported the deviation from its normal accounting system. After reviewing Dongbang's methodology, we determined, for the reasons stated in our position to *Dongbang Comment 1*, that the cost reporting methodology utilized by Dongbang, including its indirect cost allocation methodology, was reasonable and accurate. Therefore, we have accepted Dongbang's submitted and verified cost methodology for use in the final determination.

Comment 3: Foreign Exchange Losses

Dongbang notes that the Department confirmed that Dongbang submitted its interest expense based on Dongbang Transport and Logistics' consolidated statements. Moreover, Dongbang states that the Department verified that the amount of foreign exchange losses occurred in 1996 attributable to financing expense were very minor. Dongbang notes that the Department routinely ignores adjustments such as these that are so minor as to have no impact on the analysis.

Petitioners note that Dongbang did not include any of its gains or losses on foreign currency transactions and translations in its reported G&A expenses. Petitioners argue that given that the Department's normal practice is to include in G&A expenses for foreign exchange gains and losses other than those related to accounts receivable, Dongbang's net losses should be included in its reported G&A expenses.

Petitioners also note that the cost verification report states that Dongbang did not allocate net loss from foreign exchange translation which was deferred in its 1996 financial statements in its reported interest expense. Petitioners argue that given that this deferred capital adjustment was not reflected in the income statement, it should properly be allocated to Dongbang's reported financial expense in the cost response. Therefore, petitioners maintain that the Department should correct Dongbang's reported interest expense accordingly in the final determination.

DOC Position

We agree with petitioners regarding Dongbang's G&A expenses and have included the unreported recognized net foreign exchange losses related to all accounts except accounts receivable in Dongbang's G&A expenses. However, we agree with Dongbang that its submitted interest expense was based on Dongbang Transport and Logistics' consolidated financial statements. Therefore, the amortized portion of the net losses from long-term foreign exchange translation which was deferred in Dongbang's 1996 financial statements is moot given that we are not using Dongbang's 1996 financial statements, but rather, we have used Dongbang Transport and Logistics' 1996 consolidated financial statements.

Comment 4: Reversal of Allowance for Bad Debt

Petitioners note that Dongbang subtracted an amount for a reversal of allowance for bad debts from its reported G&A expenses. Citing the cost verification report, petitioners state that Dongbang itself acknowledged that it ''over-estimated the bad debts allowance in the previous years and that the difference was reversed when it re-estimated the allowance in 1996.'' Petitioners maintain that the reversal of allowance for bad debt was a bookkeeping exercise related to years previous to the POI. Therefore, petitioners argue that Dongbang's reversal of allowance for bad debt cannot be considered an expense related to production during the POI and should not be netted out from Dongbang's reported G&A expenses.

Regarding petitioners argument that the Department exclude from Dongbang's G&A calculation the reversal of bad debt allowance, Dongbang maintains that it appropriately included this line item in its calculation of bad debt allowance. Dongbang states that its methodology is consistent with the Department's practice, and cites *SRAMS from Korea* as a case in which bad debt was properly classified as a non-operating general expense.

DOC Position

We agree with petitioners and have excluded from Dongbang's G&A calculation the reversal of bad debt allowance at issue. Dongbang is incorrect in stating that its methodology is consistent with the Department's past practice in *SRAMS from Korea.* Specifically, in *SRAMS from Korea,* respondents made a reversal of allowance for bad debt to correct for a previously made error. In the instant case, the allowance estimated for previous years was reversed and reflected in the current year. Because this practice will distort the expense incurred for the current year, we excluded from Dongbang's G&A calculation the reversal of bad debt allowance.

Comment 5: 1996 versus *1997 Annual Data as the Basis for G&A.*

Petitioners state that Dongbang reported its G&A expenses for purposes of its COP and CV on the basis of its audited 1996 financial statements. Petitioners note that, at verification, Dongbang presented the Department with its audited 1997 financial statements. Petitioners argue that given that it is the Department's normal practice to rely upon the most recent set of audited financial statements in calculating G&A percentages, the Department should rework Dongbang's G&A expenses on the basis of its 1997 financial statements which are similar to those reported in its 1996 financial statements. Petitioners provide a recommendation for a conservative, shortcut method of estimating the effect of the changes in Dongbang's net foreign exchange losses on transactions and translations in 1997 compared to those in 1996.

Dongbang refutes petitioners' assertion that the Department should use its 1997 annual data for G&A expenses as opposed to the 1996 data reported by Dongbang. Dongbang argues that it is the Department's clear practice to calculate G&A expenses based on annual data which most closely corresponds to the POI in order to eliminate distortions that are caused by periodic expenses which may fluctuate dramatically during the fiscal period, but which are otherwise representative of a company's experience.

Dongbang maintains that in this case, the use of 1996 annual data is more appropriate, as reliance on the 1997 annual data would result in distortions to the Department's analysis. Specifically, Dongbang argues that there is no significant difference in G&A expenses between 1996 and 1997, and that the significant difference between the two periods for non-operating expenses is due entirely to foreign exchange losses. Dongbang contends that these losses are unrelated to production or sales of subject merchandise during the POI. Dongbang states that as of 1997, under Korean GAAP, Korean companies must analyze outstanding long-term debt as of the end of the fiscal year (December 31 for Dongbang) and must amortize the foreign exchange translation losses relating to that debt based on the life of the loans. As a result, Dongbang maintains that its 1997 year-end financial statements show large foreign exchange translation losses based on the artificial use of December 31, 1997, when the Korean won underwent significant devaluation, as the point in time when these losses are measured for accounting purposes. Dongbang states that in *Oil Country Tubular Goods from Mexico,* 60 FR 33572 (June 28, 1995), the Department, given very similar facts, declined to rely on 1994 annual financials statements for the calculation of interest expense, as urged by petitioners, because Mexico experienced severe devaluation of its currency in December of 1994, which the Department stated made the 1994 financial statements unrepresentative of the POI and severely distortive.

Moreover, regarding the foreign exchange losses which represent the significant difference between the 1996 and 1997 annual data, Dongbang maintains that the Department considers such gains and losses an element of interest expense, and cites SRAMS from Korea to support its argument. Dongbang asserts that it properly based its interest expense on the experience of its consolidated parent, Dongbang Transport and Logistics. Dongbang further maintains that including exchange gains and losses in G&A, therefore, would double-count these expenses, once as an element of G&A and once as an element of interest expense. However, Dongbang does not dispute petitioners' proposition that the Department include foreign exchange gains and losses attributable to accounts payable in the calculation of G&A expense.

Therefore, Dongbang argues that the Department should reject petitioners' argument to rely on 1997 data or to add elements of the 1997 foreign exchange losses to 1996 expenses.

DOC Position

We have continued to use Dongbang's reported G&A expenses derived from the 1996 annual data. We note that it is the Department's practice to use G&A expenses based on annual data which most closely corresponds to the POI. In this instance, given that the POI covers a six month period in both 1996 and 1997, both years' financial data equally correspond to the POI. However, although Dongbang submitted its 1997 audited financial statements at verification, we used the audited 1996 financial statements for our reconciliations and other verification procedures since all submitted G&A expense rate data was based on the 1996 financial statements. In this case, given that all parties agree that Dongbang's G&A expenses from both 1996 and 1997 are similar with the exception of the foreign exchange losses related to long-term debt, which impacts the interest expense calculation rather than G&A expense calculation, we used Dongbang's 1996 annual data. In addition, we continued to use Dongbang Transport & Logistics' consolidated 1996 financial statements for the interest expense calculation. We found that the devaluation of the Korean won began in earnest near the end of August 1997 and continued through the remainder of the year and into 1998 (see Federal Reserve exchange rates). Since the use of Dongbang Transport & Logistics' consolidated 1997 financial statements for interest expense would incorporate this post-POI devaluation, we have considered it more appropriate to rely on Dongbang Transport & Logistics' consolidated 1996 financial statements.

Comment 5: Dongbang's Local Sales.

Petitioners contend that although Dongbang's home market sales listing shows prices for local sales both in terms of U.S. dollars and Korean won, Dongbang has suggested throughout this investigation that these sales are actually denominated in U.S. dollars. Petitioners maintain that it is the Department's longstanding practice that the respondent should report expenses and revenues in the currencies in which they are incurred. As a result, petitioners maintain that the Department should use the U.S. dollar prices provided in Dongbang's home market sales database.

DOC Position

We agree with petitioners regarding the Department's longstanding practice that the respondent should report expenses and revenues in the currencies in which they are incurred. While it appears that Dongbang's home market local sales are incurred in U.S. dollars, the evidence on the record is inconclusive as to whether freight income is included in the reported dollar-denominated gross unit price field on Dongbang's sales listing. Furthermore, at verification, we verified the Korean won prices and traced these Korean won prices through Dongbang's accounting system and to payment records. Therefore, although it is our preference to recognize prices, expenses, and revenues in the currency in which they are incurred, we have continued to use the reported Korean won prices in our final analysis given the information on the record in this case.

Comment 6: Clarifications to the Dongbang Verification Report.

Dongbang notes that although the Department's sales verification report indicates that a single interest rate was used by Dongbang for reporting its home market bank credit charges, a review of the sales listing shows that this credit expense reflects the November 1996 interest rate change. Dongbang also states that it reported its sales prices for local export sales in U.S. dollars, not Korean won as indicated by the Department's verification report. Petitioners did not address these issues.

DOC Position

We agree with Dongbang that there were no errors in Dongbang's reported home market bank credit charges or its U.S. sales reporting with regard to local export sales.

Comment 7: ''Prime 2'' Merchandise.

Petitioners maintain that the discovery of the existence of ''prime 2'' merchandise during verification constitutes new information for which Dongbang had never before provided any explanation. Petitioners state that company officials informed Department verifiers that while Prime 1 products are produced to strict quality controls as per specific customers' requests and can be sold to all customers, prime 2 products are SSWR produced to Dongbang's own quality standards and, thus, cannot be sold to prime 1 customers. Petitioners contend that there is nothing on the record of this proceeding to clarify the distinction between prime 1 and prime 2 products and to indicate whether it is even possible to distinguish between the two types of products in Dongbang's sales or cost files. Petitioners argue that since prime 2 product cannot be sold to prime 1 customers and because there is no clear way to distinguish the prime 2 product and remove it from Dongbang's home market sales database, the Department should assume that all products in the home market database is of prime 2 quality, and that such products sell at a relative price discount. Therefore, petitioners contend that the Department should use the highest sales price within each control number as the weighted-average price for that particular control number as a means of adjusting the reported sales data.

Dongbang states that, in its responses, it indicated that there are two internal codes for prime merchandise. Dongbang asserts that prime 2 merchandise is prime merchandise and should continue to be treated as such. According to Dongbang, prime 2 merchandise meets all of Dongbang's quality standards, is not sold at a discount, and does not contain the surface defects that characterize non-prime merchandise. Dongbang further states that there is no price difference between the two product classifications.

Dongbang argues that because both of these internal codes reflect prime merchandise, they are comparable for the Department's purposes. Dongbang states that petitioners cite no cases to the contrary. Moreover, Dongbang states that in past cases involving steel products, the Department has treated all types of prime products equally as prime merchandise. For example, Dongbang cites the *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago,* 63 FR 9177, 9180 (February 24, 1998) (*Wire Rod from Trinidad and Tobago*) in which the Department treated two types of merchandise as prime merchandise because both types were identical under the Department's matching characteristics, and were purchased and used by customers as prime merchandise. Dongbang further notes that it is common industry practice to have multiple internal codes for prime merchandise, and that in past cases the Department has treated all types of prime products as prime merchandise.

DOC Position

We disagree with petitioners that the existence of prime 2 merchandise constitutes new information. As noted in its rebuttal brief, Dongbang previously reported in its latest supplemental questionnaire response that prime merchandise is identified by two internal codes. Furthermore, while at verification, we substantiated Dongbang's assertion that it maintains separate codes for prime merchandise. Regarding petitioners' contention that there is no way to distinguish prime 1 merchandise from prime 2 merchandise in the sales and cost files, we confirmed at verification that both prime 1 and prime 2 products meet the chemical content tolerances of internationally-recognized grade standards and that neither type of prime product contained the surface defects inherent in non-prime products. Although, as petitioners contend, we are unable to determine from a review of the sales listings or questionnaire responses whether prime 2 products are sold at a discount from prime 1 products, we found no physical differences between the two prime products that would lead us to believe that prime 1 and prime 2 products are not comparable in price or cost. We agree with Dongbang that the facts in this case are consistent with those in *Wire Rod from Trinidad and Tobago,* in which the Department determined that products that were verified to be identical in every way to prime merchandise within each control number and within the meaning of the statute and the Department's product matching hierarchy should be treated as prime merchandise. Moreover, contrary to petitioners' proposition that all home market sales should be assumed to be prime 2 merchandise absent evidence distinguishing sales of prime 1 from sales of prime 2 merchandise, our sales verification exhibit on this topic demonstrates that prime 1 merchandise comprises the majority of both home market and U.S. sales. (*See* Sales Verification Exhibit 17.) Therefore, we find no basis for determining that prime 1 merchandise and prime 2 merchandise are not comparable. Consequently, we have rejected petitioners' argument that we use the highest sales price within each control number as the weighted-average price for that particular control number as a means of adjusting the reported sales data.

Comment 8: Brokerage Charges for Dongbang's U.S. Sales.

Petitioners argue that the Department should review Dongbang's U.S. sales listing and set all brokerage charges that are less than 12,000 won per shipment to 12,000 won given that the Department found at verification that Dongbang incurs minimum brokerage charges on its U.S. sales of the greater of 0.08 percent of the FOB sales value of the shipment or 12,000 won per shipment.

Dongbang acknowledges that it did not utilize the 12,000 won minimum brokerage charge in its brokerage expense methodology for five U.S. sales. However, Dongbang states that the Department should not apply the full 12,000 won to each of these sales. Dongbang argues that since the 12,000 won minimum applies to a shipment, not each individual sale, this method would be distortive and unreasonable in cases where more than one sale is included in a shipment.

Dongbang also states that it reported a per-unit brokerage charge in its sales listing (*i.e.*, brokerage charge for the shipment divided by the sales quantity), not the entire expense. Dongbang therefore argues that if the Department chooses to utilize the 12,000 won minimum brokerage charge for these five sales, it should divide this charge by the sales quantity to arrive at the per-unit brokerage charge.

DOC Position

We agree with petitioners' assertion that the Department should review Dongbang's U.S. sales listing for sales that do not reflect the 12,000 won minimum brokerage charge applied to Dongbang's shipments of SSWR. We performed this exercise at verification and confirmed that Dongbang under-reported brokerage charges for five U.S. sales, in accordance with the reporting methodology described by Dongbang.

However, we also agree with Dongbang in that the Department should not apply the full 12,000 won to each of the five sales at issue for two reasons. First, we agree with Dongbang that it reported a per-unit brokerage charge (*i.e.*, brokerage charge for the shipment divided by the sales quantity), not the entire expense. We also agree with Dongbang's argument that since the 12,000 won minimum is applied to a shipment and not each individual sale, the 12,000 won minimum should be allocated over all sales in the shipment.

In attempting to revise the brokerage expenses reported for the five sales in question to account for the 12,000 won minimum charge, we found that the evidence on the record only allowed us to recalculate brokerage for two of the five sales that have been under-reported. Therefore, in accordance with section 776(a) of the Act, which allows the Department to use facts available when information necessary to the Department's analysis is not available, we applied the weighted-average brokerage adjustment calculated for these two sales to the remaining three sales, as facts available, to arrive at an appropriate per-unit brokerage charge for all affected transactions.

Comment 9: Duty Drawback.

Petitioners argue that Dongbang fails to qualify for a duty drawback adjustment because Dongbang has not provided an explanation for why it has sales of identical products in the home market and U.S. market for which its duty drawback amounts are different. As a result, petitioners contend that Dongbang has not met the Department's two-prong test in that it has not been able to demonstrate that there is a direct link between the import duty and the rebate granted.

Therefore, petitioners argue that the Department should deny a duty drawback adjustment to U.S. price as it did in *Stainless Steel Bar from India* 63 FR 13622, 13625 (March 20, 1998) (*Steel Bar from India*).

Dongbang asserts that it reported duty drawback amounts for U.S. sales by dividing the total duty drawback actually received for each sale by the quantity of the sale. Dongbang states that its per-unit duty drawback amounts vary from sale to sale because of this transaction-specific methodology. Dongbang maintains further that two sales of the same grade of SSWR may result in different duty drawback payments because the amount of duty drawback in a sale reflects the specific composition of imported raw materials for that sale. Dongbang also asserts that the Department noted no discrepancies regarding duty drawback in its verification report and should apply Dongbang's reported duty drawback amounts in the final determination.

DOC Position

We disagree with petitioners that Dongbang should not be entitled to the claimed duty drawback adjustment. Section 772(c)(1)(B) of the Act provides for adjustment for duty drawback on import duties which have been rebated (or which have not been collected) by reason of the exportation of the subject merchandise. In accordance with this provision, we will grant a duty drawback adjustment if we determine that 1) import duties and rebates are directly linked to and are dependent upon one another, and 2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. *See e.g., Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Administrative Review,* 61 FR 55965 (October 30, 1996) (*Rope from Korea*). The first prong of the above test requires the Department to analyze whether the foreign country in question makes entitlement to duty drawback dependent upon the payment of import duties (*see Far Eastern Machinery* 699 F. Supp. 309, 311 (Ct. of Int'l Trade 1988)). This ensures that a duty drawback adjustment will be made only where the drawback received by the manufacturer is contingent on import duties paid or accrued. The second prong requires the foreign producer to show that it imported a sufficient amount of raw materials (upon which it paid import duties) to account for the exports, based on which it claimed rebates. *Id.*

We are satisfied that under the duty drawback method reported by Dongbang, the Korean Government makes entitlement to duty drawback dependent upon the payment of import duties, which satisfies the first prong of the duty drawback test. In addition, we are satisfied that Dongbang is required by the Korean government to provide adequate information that shows that it had sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. This satisfies the second prong of the duty drawback test. (*See Rope from Korea*). Furthermore, our review of selected transactions in both the home and U.S. markets during verification indicated that there were no discrepancies with the duty drawback amounts reported by Dongbang. Therefore, we have accepted Dongbang's reported duty drawback for purposes of the final determination.

Changwon

Comment 1: Changwon's Reported Interest Revenue.

Petitioners assert that the Department should not include Changwon's reported interest revenue in the calculation of net U.S. prices. Petitioners argue that Changwon incorrectly calculated the per-unit interest revenue based on interest revenue to be received from its customers. Petitioners next argue that the total Pohang Steel America Corporation (POSAM) invoice amounts for value and quantity, upon which the reported interest revenue was calculated, include sales of non-subject merchandise. Thus, petitioners maintain, Changwon failed to provide evidence that it in fact received the interest revenue for sales of SSWR during the POI.

Petitioners further contend that even if Changwon did charge interest to its customers for late payments, Changwon failed to tie the interest revenues that it charged to its customers to the subject merchandise. Petitioners cite *Tapered*

Roller Bearings and Parts Thereof, Finished or Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof From Japan, 63 FR 20,585 20,602 (April 27, 1998) (*TRBs from Japan*), as a case in which the Department disallowed the respondent's claimed amounts for discounts, rebates, and other post-sale adjustments as direct deductions to the home market sales prices, on the grounds that the respondent failed to tie the adjustments directly to the sales of subject merchandise.

Changwon argues that it reported the actual interest revenue received from U.S. customers for late payments. Further, Changwon states that the reported interest revenue is directly tied to each sale of subject merchandise. Changwon asserts that petitioners' allegation that the calculation of interest revenue includes sales of non-subject merchandise is wrong. Changwon states that every sale contained in the invoices upon which the interest revenue was allocated was a sale of subject merchandise and, thus, the portion of interest revenue allocated to a sale is the actual amount of interest revenue earned on that sale.

Changwon also argues that petitioners' citation to *TRBs from Japan* actually supports Changwon's position because, in that case, the Department stated that it treats an allocated adjustment as the actual amount associated with a sale if the adjustment was ''granted as a fixed and constant percentage of the sale price of all transactions for which it was reported and to which it was allocated.'' Changwon states that it in fact based its allocation on applying a fixed and constant percentage to the price for each sale on the invoice. For these reasons, Changwon argues that the Department should adjust U.S. sales prices for the reported interest revenue in the final determination.

DOC Position

We agree with Changwon and have adjusted U.S. sales prices for the reported interest revenue, where appropriate. We disagree with petitioners' arguments regarding Changwon's reporting of interest revenue. First, we found at verification that, contrary to petitioners' allegation, the interest revenue reported by Changwon had in fact been received by Changwon from its U.S. customers for late payments.

Second, we find petitioners' allegation that sales of non-subject merchandise were included in the invoices upon which the interest revenue calculation was based to be incorrect. Our findings at verification for selected invoices confirmed that the sales comprising each invoice upon which the interest revenue calculations were based, were sales of subject merchandise.

Third, petitioners' contention that Changwon failed to tie the interest revenues that it charged to its customers to the subject merchandise is also incorrect. As noted above, we confirmed at verification that all sales included in the interest revenue calculation were of subject merchandise and that the interest revenue reported was directly tied and properly allocated to these sales. (*See TRBs from Japan*.)

For the reasons stated above, we have included Changwon's reported interest revenue relevant to its U.S. sales in our EP calculations.

Comment 2: Changwon's G&A Expenses.

Petitioners state that the Department should revise Changwon's reported G&A expense ratio to include bad debt expenses, amortization for foundation expenses, business start-up expenses and stock issuance expenses that were not previously included in the G&A ratio. Petitioners argue that these expenses were incurred by Changwon during the POI and all such expenses were period expenses, and, therefore, should be included as part of the expenses for the period.

Petitioners maintain that the bad debt expenses which the company recognizes during the fiscal period and were reported in Changwon's financial statements should be included in its G&A calculation. Petitioners contend that after the POI, some percentage of accounts receivable on subject merchandise sold within the POI would undoubtably be reclassified as bad debt. Therefore, petitioners argue that Changwon's 1997 financial statements do not reflect any bad debt because, due to the fact that the company was established in February 1997, the company had no previous bad debt experience to carry over from 1996.

Petitioners also argue that the bad debt reported in Changwon's financial statements which it classified as non-operating expense ''related only to tax law'' in accordance with Korean GAAP, and excluded from the G&A calculation, should also be included in its G&A calculation. Petitioners state that Changwon has placed nothing on the record to substantiate its claim that this bad debt relates only to tax law. Petitioners argue that absent evidence to back up this contention, it must be assumed that the GAAP-accepted practice reported by Changwon relates to a meaningful expense from the accounting period and, thus, this bad debt expense should be included in the G&A calculation. Petitioners assert that these expenses should be characterized as G&A rather than selling expenses because Changwon was not created until the second half of the POI thus no previous fiscal year exists from which to develop bad debt.

Furthermore, petitioners state that it is the Department's normal practice not to include foreign exchange losses and gains related to accounts receivable, but to include other types of exchange gains and losses in the calculations for G&A. Petitioners state that Changwon's reporting methodology is inaccurate in that it excluded from its G&A calculation any gains and losses that were related to short-term borrowings and deposits, but included gains and losses related to accounts receivable. Petitioners state that the Department should adjust Changwon's G&A calculation in accordance with its normal practice.

Changwon states that its financial statements identify two types of bad debt: the first type represents the company's recognition of bad debt during the fiscal period, and the second type of bad debt is an accrual that does not reflect an actual expense, but is an allowance under Korean GAAP that is recorded for income tax purposes. Changwon notes that it erroneously indicated in its responses that the first type of bad debt expense had been included in the calculation of direct selling expenses. Changwon clarifies that it actually did not incur this type of bad debt expense during the POI and thus did not report it as a selling expense or in its G&A calculation.

Changwon also states that it properly excluded the second type of bad debt expense because this expense relates solely to tax law and represents no real cost to Changwon. In fact, Changwon maintains that to include these costs would be distortive for antidumping purposes because they relate solely to taxes. Changwon cites *Stainless Steel Angles from Japan,* 60 FR 16608, 16617 (March 31, 1995) and *Fresh and Chilled Atlantic Salmon from Norway,* 58 FR 37912, 37915 (July 14, 1993), among other cases, in support of its argument that the Department has, in the past, disregarded costs reported solely for tax purposes.

Changwon also argues that it correctly excluded amortization expenses, business start-up expenses, and stock issuance expenses from its G&A calculation because these were extraordinary, one-time expenses and were not related to the subject merchandise. Changwon states however, that if the Department were to include these expenses in the G&A calculation, it should include only the portion of the expenses appropriately attributable to the reporting period (*i.e.,* amounts amortized in accordance with Korean GAAP).

Changwon also states that, with regard to foreign exchange gains and losses, the Department considers these gains and losses to be an element of interest expense (*see SRAMS from Korea*), so to include them in the G&A calculation would double-count these expenses.

DOC Position

We agree with petitioners. Both types of allowance for bad debt expenses are actual costs recognized in the respondent's financial records, whether they are actually incurred or not, based on Korean GAAP. All of the other mentioned amortization expenses are also recognized expenses in the financial statements and only the amortized portion was reflected in the Changwon's 1997 financial statements. Contrary to Changwon's assertions that these expenses should not be included because they either relate solely to tax law or that they were extraordinary, one-time expenses, we found that the amortized portions were actually recorded in Changwon's accounting system and its financial statements and therefore represent costs related to operations. In addition, we find nothing extraordinary about these expense items (*i.e.,* they are neither unusual in nature or infrequent in occurrence). Therefore, the Department included all types of bad debt expense in the reported indirect selling expenses, and amortization for foundation expenses, business start-up expenses and stock issuance expenses, in the reported G&A expenses.

Comment 3: Changwon's Interest Expense Reporting Period.

Changwon states that the Department properly utilized its reported interest expense based on the most recently completed fiscal year. Changwon states that its reported interest expense was based on POSCO's consolidated information for 1996, which is the period that most closely corresponds to the POI and is in accordance with the Department's policy to rely on the interest expense based on the prior-year consolidated financial statements, so long as the interest expense reasonably reflects the current financial situation. Changwon claims that this is the case because the prior year is assumed to be reasonably representative of the company's normal experience. Changwon cites *Certain Hot-Rolled Carbon Steel Flat Products from France,* 58 FR 37125, 37135 (July 9, 1993) (*Flat Products from France*) in support of its position.

Changwon also states that even in the isolated cases in which the Department has deviated from this policy, financial statements that cover a period subsequent to the POI are not utilized. For example, Changwon cites *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 61 FR 13815, 13829 (March 28, 1996), where the Department accepted interest expense based on the full year 1993 and the first half of 1994, rather than exclusively the 1993 figures (the POI was February 1993 through July 1994).

Changwon maintains that use of the 1997 data on interest expense would be distortive because it includes substantial foreign exchange losses that occurred at year-end 1997 which were due to the rapid depreciation of the won in December 1997, subsequent to the POI. Changwon argues that the economic crisis that precipitated the currency depreciation was in no way related to the production or sale of the subject merchandise during the POI and, thus, to include these losses would be distortive. Changwon asserts that, under similar circumstances, the Department has declined to utilize a time period which included a severe devaluation of a currency in past cases such as *Oil Country Tubular Goods from Mexico,* 60 FR 33567, 33572 (June 28, 1995). Changwon argues that should the Department determine that 1996 is not representative, it should limit any adjustments to the interest expense ratio to changes in the exchange rate which occurred during the POI.

Petitioners contend that Changwon's interest expenses should be based on POSCO's 1997 financial statements. Petitioners state that Changwon should be consistent in its choice of financial statements from which to draw its expense ratios since it reported G&A on the basis of its financial statements for 1997 but employed POSCO's consolidated 1996 financial statements for purposes of reporting its interest expense ratio. Given that 1997 is the most recent year for which financial statements are available, it would be logical for both G&A and interest expense to be derived from 1997 figures.

Petitioners argue that the cases cited by Changwon do not support Changwon's position, but instead indicate a preference to use the closest corresponding fiscal year financial statements. For example, in *Silicon Metal from Brazil,* 63 FR 6899, 6906 (February 11, 1998), the Department stated that it normally uses the ''financial statement that most closely corresponds to the POI.'' Also, in *Flat Products from France,* the Department noted that its ''normal methodology is to calculate G&A expenses based on the audited annual financial statements which most closely correspond to the period of investigation.'' Only in cases in which ''such financial statements are not available, the Department has relied on financial statements from the fiscal year prior to the POI, when such statements provide a reasonable approximation of the company's current financial position.''

Petitioners further argue that since 1997 is the most recent year for which audited financial statements are now available, is the year that Changwon came into existence, and includes the entire part of the POI during which Changwon produced and sold the subject merchandise, 1997 is the logical choice on which to base Changwon's interest expenses.

DOC Position

We disagree with petitioners, and have used POSCO's 1996 consolidated financial statements as the basis for Changwon's interest expense. In this case, it is our preference to use the 1996 financial statement data for the reasons similar to those stated in *Dongbang Comment 5* of the ''Interested Party Comments'' section of this notice. However, unlike Dongbang, Changwon was not in existence in 1996 and, therefore, we have no alternative but to use Changwon's 1997 financial statements for purposes of calculating G&A expenses.

Comment 4: EP vs. CEP Sales Classification.

Petitioners argue that the Department should determine that Changwon's sales through POSAM are CEP sales. Petitioners cite *1998 Flat Products from Korea,* a decision in which the Department found, in contrast to several previous determinations, that POSCO's sales in the United States through POSAM should be classified as CEP sales. Petitioners argue that the facts in the *1998 Flat Products from Korea* case regarding the classification of U.S. sales are virtually identical to those in this case.

Petitioners maintain that the record does not demonstrate that the U.S. affiliate's involvement in making the sales was incidental or ancillary. Petitioners assert that Changwon seldom had contact with U.S. customers, that typically POSAM was directly contacted by unaffiliated U.S. customers that wished to purchase the subject merchandise, and that POSAM signed the sales contract. Petitioners claim that POSAM also plays a central role in sales activities after merchandise arrives in the United States. Petitioners also question respondent's claim that the U.S. affiliate had no role in price negotiation by stating that Changwon did not provide tangible proof that it had rejected prices for sales organized by POSAM (which, according to petitioners, is a critical test of the involvement of the Korean producer in price setting.) Petitioners further argue that POSAM and POSTEEL are more than just mere paper processors based on proprietary evidence found by the Department at verification.

Changwon argues that its U.S. sales should be treated as EP transactions because they pass the Department's criteria for EP sales: the subject merchandise is shipped directly from the manufacturer to the unaffiliated buyer, such direct shipments to the unaffiliated buyer are a customary channel of trade, and the U.S. affiliate only acts as a processor of sales-related documents and a communication link with the unaffiliated buyer. Changwon claims that POSAM is merely a communications link, does not have independent sales negotiation authority, and holds no inventory.

Changwon states that, at verification, the Department established that Changwon initiated contact with its U.S. customers and met with these customers to discuss its export strategy and determine the substantive terms of sale with them. Moreover, Changwon asserts, it was at these meetings that Changwon established its pricing policy based on quarterly price lists. Changwon also states that, at verification, the Department confirmed the U.S. sales process by which orders flow from the U.S. customer through POSAM and POSTEEL to Changwon and back the same route to the U.S. customer. Changwon asserts that POSAM merely transfers pricing information from customers to Changwon, and that Changwon reviews and has final approval of all sales.

Changwon refers to sales examined at verification to further its argument that it is the sole authority for approving its U.S. sales. It notes that POSAM indicates in its faxes to Changwon that the sale offer is ''for your {Changwon's} review'' and that Changwon's response to POSAM refers to ''{confirmation of} our {Changwon's/POSAM's} offer'' to the customer. Also, Changwon notes a sale in which Changwon initially rejected, but then ultimately accepted, a customer's price offer that differed from its price list. Based on these facts, Changwon argues that it is clear that POSAM's only role in this situation was that of a communication link.

Changwon refutes petitioners' argument that POSAM plays a central role in Changwon's activities because it provides such services as invoicing Changwon's customers and arranging for transportation. Changwon maintains that the Department has, in numerous past cases, deemed these types of sales activities as ancillary, and that they are not a sufficient basis for classifying sales as CEP transactions. Changwon rejects, as mere speculation, petitioners' argument that because it did not present at verification an example of a sale in which it rejected an offer made by the customer, Changwon may not have the final authority on sales prices. Finally, Changwon states that petitioners' assertion that POSAM or POSTEEL distributed Changwon's product brochures and conducted certain activities in the United States for Changwon is incorrect. Changwon asserts that it, in fact, performed these activities.

DOC Position

We agree with Changwon that its U.S. sales were properly classified as EP sales, and have continued to treat Changwon's U.S. sales as EP sales in the final determination. At verification we confirmed Changwon's assertions that POSAM is not in a position to negotiate, confirm, or reject prices without approval from Changwon. We further found that Changwon issues quarterly price lists for U.S. sales which POSAM uses in the U.S. sales process. We disagree with petitioners' contention that POSAM acts as anything but a communications link in this instance.

Section 772(b) of the Act, as amended, defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted.'' Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States, as adjusted.'' When sales are made prior to importation through an affiliated or unaffiliated U.S. sales agent to an unaffiliated customer in the United States, our practice is to examine several criteria for determining whether the sales are EP sales. Those criteria are: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent was limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. buyer. Where all three criteria are met, indicating that the activities of the U.S. selling agent are ancillary to the sale, the Department has regarded the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States where the sales agent performs them, and has determined the sales to be EP sales. Where one or more of these conditions are not met, indicating that the U.S. sales agent is substantially involved in the U.S. sales process, the Department has classified the sales in question as CEP sales. (*See, e.g., 1998 Flat Products from Korea* and *Viscose Rayon Staple Fiber from Finland*, 63 FR 32820 (June 16, 1998).)

In the instant investigation the sales in question were made prior to importation through Changwon's affiliated Korean trading company, POSTEEL, and its affiliated U.S. trading company, POSAM, to an unaffiliated customer in the United States. The record in this case indicates that the subject merchandise was shipped directly from Changwon to the unaffiliated U.S. customers and that this was the customary commercial channel between these parties. The remaining issue is whether POSAM's role in the sales process was limited to that of a ''processor of sales-related documentation'' and a ''communications link.'' The record shows that the U.S. sales process, beginning with the establishment of Changwon during the POI, includes the following events: (1) Changwon held an export strategy meeting in March 1997 with potential U.S. customers (these were the same customers Changwon sold to during the POI) wherein substantive terms of sale, payment, and delivery terms were discussed. Changwon also established its pricing policy based on quarterly price lists during this meeting; (2) For the remaining three months of the POI, U.S. customers contacted POSAM to inquire about purchasing Changwon's SSWR. However, POSAM did not actively advertise for Changwon in the United States and did not solicit business on behalf of Changwon. Changwon itself contacted its potential U.S. customers, as evidenced by the above-referenced export strategy meeting; (3) POSAM does not negotiate sales terms with Changwon's U.S. customers. POSAM relays information through POSTEEL between Changwon and its U.S. customers. Correspondence by faxes reviewed at verification confirmed Changwon's assertion that POSAM may not accept the customer's order without Changwon's final approval; (4) After an order is accepted by Changwon, POSAM transmits the order acceptance from POSTEEL to the U.S. customer; (5) After Changwon has produced the order, it sells the subject merchandise to POSTEEL, who then sells it to POSAM in a back-to-back transaction wherein title to the goods is transferred between the parties; (6) POSTEEL arranges transportation of the subject merchandise to the United States; (7) POSAM arranges to move the subject merchandise through U.S. Customs and to transport it to U.S. customers; (8) POSAM invoices U.S. customers; (9) U.S. customers remit payment to POSAM, which subsequently transfers the payment to POSTEEL, which, in turn, transfers it to Changwon.

These facts show that the extent of POSAM's involvement in the sales process is indicative of the ancillary role normally played by a ''processor of sales-related documentation'' and a ''communications link.'' While POSAM was involved in document processing and other ancillary activities related to the sales of subject merchandise to the U.S. customer (*e.g.*, clearing customs, arranging for U.S. transportation, issuing invoices, and collecting payment), POSAM had no substantial involvement in the sales process, such as sales negotiation, providing technical support, or handling warranty claims, with respect to subject merchandise. POSAM does not negotiate sales terms with U.S. customers, but rather relays pricing information between Changwon and the U.S. customer. We disagree with petitioners' assertion that Changwon does not have final authority over the sale based on our findings at verification. For each of the sales examined at verification, we found that Changwon ultimately accepted or rejected the sales price. *See* Changwon Sales Verification Report at Exhibit 17. Furthermore, although Changwon did not have direct contact with its U.S. customers on a daily basis during the POI, the export strategy meeting served to lay out the substantive terms of delivery, sale, and payment and established Changwon's general pricing policy. With these terms explicitly stated, it is reasonable to assume that there was little need for direct contact between Changwon and its U.S. customers during the remaining three months of the POI. Indirect contact, however, still continued. In fact, we observed at verification that all correspondence examined between Changwon and the U.S. customers was relayed through POSTEEL/POSAM.

The nature of Changwon's initial and ongoing involvement in the sales process and POSAM's ancillary role in the sales process lead us to conclude that the sales took place before the date of importation by the producer of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States. Therefore, in accordance with Section 772(a) of the Act we have continued to classify Changwon's U.S. sales as EP sales for the final determination.

Comment 5: Corrections for Clerical Errors Found at Verification.

Petitioners state that the Department should allocate Changwon's indirect selling expenses incurred by POSTEEL in Korea for U.S. sales based on sales value rather than sales quantity, and that the Department make any corresponding changes in its calculations since Changwon recalculated its indirect selling expenses incurred from fiscal year 1996 to 1997.

Petitioners agree that the VAT total account receivable figures for certain customers should be corrected in order to properly decrease the average credit period for seven customers.

Petitioners state that the Department should use the corrected warranty expense for home market observation 59 and revised ocean freight for U.S. observations 17 through 21.

Petitioners state that the Department should correct the product characteristics that were misreported by Changwon for grades SUS 304L, SUSY 308, SUSY 308L, AWSER 308L, AWSER316L, SUS XM7, and ER 309L. They also state that in correcting these items, the Department should use the actual chemical composition of the products for product-matching purposes.

Changwon did not comment on this issue.

DOC Position

We agree with petitioners in part. As noted above in the ''Export Price'' and ''Normal Value'' sections of this notice, we have made appropriate revisions for all errors found at verification. However, we disagree with petitioners' statement that we should use the actual chemical compositions of the products in our analysis. For the reasons stated in the December 18, 1997, Memorandum to Holly Kuga from the Team Re: Whether to Reconsider the Department's Model Match Methodology for this Product and the *Preliminary Determination*, the Department has rejected the use of actual chemical composition as a product characteristic for product comparison purposes.

Comment 6: Changwon's Duty Drawback Adjustment.

Petitioners argue that Changwon does not qualify for a duty drawback adjustment to U.S. price. Petitioners state that Changwon has failed to meet the Department's two-part test which requires that (1) import duties and rebates are directly linked to and are dependent upon one another, and (2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product.

Petitioners refer to Changwon's November 10, 1997 response, in which Changwon gave a ''best estimate'' of duty drawback because its system for reporting duty drawback was not yet fully operable. Petitioners believe that this fact alone justifies a denial of a duty drawback adjustment. Petitioners cite *Steel Bar from India* as a situation in which the Department denied a duty drawback adjustment to a respondent that based its duty drawback calculations on theoretical amounts of an input product, rather than on amounts of raw materials that were actually imported for use in the subject merchandise. Petitioners state that the facts in this case (whereby the drawback credits were not calculated based on the product actually imported) are similar to those in *Steel Bar from India.*

Petitioners contend that another reason Changwon should be denied a duty drawback adjustment is the fact that, at verification, the Department found that ''Changwon cannot track imported raw material used in the production of finished product to the specific export sale.'' Petitioners assert that Changwon's reliance on the ''standard government calculation for each applicable raw material'' to claim duty drawback is unacceptable, because, among other reasons, there is no means by which the Department can determine whether the respondent is claiming more drawback than that to which it is entitled. Petitioners also point out that Changwon's claim also fails because it is apparently not able to track imported raw material usage to U.S. exports of the subject merchandise, and drawback is not being claimed on amounts of imported materials actually being used.

Petitioners state that there is no direct link between the import duty and rebate granted, and that there were not sufficient imports of raw materials used in the production of the final exported product to account for the drawback on the exported product.

Petitioners assert that, even if the above described problems did not exist, Changwon would not be eligible for an adjustment because it did not actually receive any duty drawback during the POI. Petitioners state that any adjustment for duty drawback must be based on drawback payments actually received during the POI or review period. Petitioners cite *Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand,* 60 FR 29553, 29566 (June 5, 1995) and *Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India,* 56 FR 52521, 52527 (October 21, 1991) as examples whereby the Department has recognized that refunds should be taken into account for the period in which they are received.

Petitioners also refute Changwon's claims that the Department fully verified Changwon's duty drawback adjustment and that the Department's ''standard practice'' is to recognize adjustments that are accrued by a company such as volume rebates. Petitioners state that while the Department was able to verify some information regarding the duty drawback adjustment, it did not successfully verify the claims themselves. Petitioners then argue that there is no ''standard practice'' by which the Department would grant adjustments for duty drawback when the duty drawback payments are not received by the respondent during the POI or review period.

Furthermore, regarding Sammi-produced merchandise purchased by Changwon, petitioners state that there is no information on the record indicating that Sammi had imported materials for its production of the SSWR. Similarly, petitioners state that there is no information that indicates whether, if Sammi had imported materials for its production of the SSWR, those import duties would satisfy the Department's two-prong test for duty drawback adjustment. Furthermore, petitioners contend that is no indication that the prices paid by Changwon for Sammi-produced SSWR included import duties, and if so, whether Changwon was entitled to get any duty drawback on those duties.

Changwon maintains that the Department's findings during verification support the Department's preliminary decision to allow Changwon's reported duty drawback adjustments. Changwon states that it has demonstrated, and the Department has fully verified, that it accurately reported the duty drawback incurred on its sales during the POI. Changwon asserts that its most recent supplemental response contained resubmitted duty drawback adjustments which incorporated the actual amounts of duty drawback acquired by Changwon.

Changwon states that the Department confirmed during verification that Changwon can claim a duty drawback only if the amount of raw materials on an import certificate are sufficient to produce the quantity of subject merchandise stated on an export certificate. This, according to Changwon, fulfills the Department's requirements for a duty drawback adjustment that the import duty and rebate are directly linked and dependent on one another and that there were sufficient imports of the raw materials to account for the duty drawback received. Further, Changwon asserts that the accuracy of Changwon's reported duty drawback was confirmed through the Department's trace of the reported duty drawback amounts to its applications for duty drawback to the Korean Government. Changwon also states that petitioners' allegation that it did not report actual amounts of duty drawback is incorrect and that the above-mentioned resubmitted duty drawback adjustments are in fact based on actual amounts.

Changwon dismisses petitioners' argument that Changwon must tie its receipt of duty drawback to U.S. exports. Changwon cites *Laclede Steel Co.* v. *United States,* 18 CIT 965, 972–73 (1994) as a case in which the Court of International Trade held that a respondent's reported duty drawback adjustment may result in export sales receiving more or less of an adjustment than was actually rebated is not a basis for rejecting those adjustments.

Changwon refutes petitioners' argument that it did not show that it had sufficient imports of raw materials to produce the quantity of exports that incurred duty drawback by attributing the argument to a misreading of Changwon's duty drawback exhibit. Changwon states that the worksheets referred to by petitioners were merely examples and did not represent all imported raw materials that were available for producing the exported merchandise.

Changwon states that petitioners' argument regarding duty drawback received on sales of Sammi-produced merchandise are also erroneous because, as part of Changwon's acquisition of Sammi, the company assumed Sammi's duty liability for imported merchandise and Sammi's import certificates were transferred to Changwon. This allowed Changwon to properly receive duty drawback on the export of Sammi-produced merchandise.

Changwon argues that it properly included duty drawback received after the end of the POI because its normal business practice is to record its duty drawback payments on an accrual basis. Changwon states that it is the Department's practice to accept a company's sales expenses and adjustments that are reported consistently with its normal accounting practices. Changwon asserts that there is no evidence on the record that contradicts the fact that Changwon applies for duty drawback as a normal part of its business practice and that it fully receives the amount of duty drawback claimed.

DOC Position

We agree, in part, with both parties. First, contrary to petitioners allegation regarding Changwon's explanation of its duty drawback reporting methodology, we agree that Changwon revised its duty drawback adjustments to reflect the actual amounts of duty drawback in its most recent supplemental response. Furthermore, we disagree with petitioners that Changwon is required to trace imported raw materials to export sales. In fact, the Department's practice is not that a company must trace imported input directly from importation through exportation, but rather, that a company must satisfy the two-prong test described in *Dongbang Comment 9,* above. In this regard, we are satisfied that Changwon has met each of the two prongs of this test for reasons similar to those explained above for Dongbang. However, in accordance with section 772(c)(1)(B) of the Act, which requires the Department to increase starting price for EP and CEP by the amount of any import duties ''imposed by the country of exportation which have been rebated, or which have not been collected by reason of the exportation of the subject merchandise to the United States,'' we have recalculated Changwon's reported duty drawback to reflect only those amounts actually rebated. Regarding duty drawback on Sammi-produced merchandise which was sold by Changwon, the information provided by Changwon is inconclusive as to whether Changwon is entitled to duty drawback on this merchandise. However, given that we have calculated duty drawback only on rebates actually received by

Changwon, this issue is moot. *See Final Determination Calculation Memorandum,* for further discussion.

Comment 7: Transactions-Disregarded and Major-Input Rules.

Changwon argues that if the Department continues to collapse Changwon and POSCO as a single producer for the final determination, the Department should not apply the transactions-disregarded and major-input rules under section 773(f)(2) and (3) in determining the value of inputs provided by POSCO to Changwon. Changwon notes that the Department has stated that once it collapses two companies, it no longer applies the major-input or transactions-disregarded rules for valuing transfers of products from one part of the entity to another. Changwon cites *1997 Flat Products from Korea* where the Department determined that the POSCO group (encompassing three separate producers: POSCO, Pohang Coated Steel (POCOS) and Pohang Steel Industries (PSI)) represents *one producer* of certain cold-rolled steel flat products and that as such, transactions among the parties be valued based on the group as a whole. It further states that since the POSCO group was considered one entity, the major-input rule and transactions-disregarded provisions of the Act were not applied because there are no transactions between affiliated persons. Changwon notes that the Department reaffirmed its clear position on this issue in *1998 Flat Products from Korea.*

In support of the above argument, Changwon states that it has submitted and the Department has verified Changwon's costs, adjusted to reflect POSCO's actual cost of manufacturing transferred inputs. After the preliminary determination and learning of the Department's decision to collapse Changwon and POSCO, Changwon submitted cost data that was consistent with the Department's collapsing decision. Changwon asserts that semi-finished products should be treated as transfers among factories or divisions within the same company, and should be valued within the single entity at the actual cost of manufacturing the input. This policy avoids double counting of POSCO's G&A, and avoids including POSCO's internal profit earned on the input. Specifically, the Department should use the COM to value the inputs rather than the transfer price.

Petitioners contend that the Department should continue to apply the major-input rule and transactions-disregarded rule in valuing inputs received by Changwon from POSCO. Petitioners explain that the major-input rule and transactions-disregarded rule have a specific purpose that is separate and distinct from the purpose of the collapsing test. Petitioners note that statutes always take precedence over regulations, and that the major-input rule and transactions-disregarded rule are statutory, while the collapsing analysis is performed pursuant to the Department's regulations. Petitioners further assert that the statute does not provide for an exception to the application of these rules in the case of collapsed parties, and thus the Department should enforce the statute in applying these rules. Petitioners maintain that the Department would be writing out of existence the statutory major-input rule and transactions-disregarded rule based on its interpretation of a regulation if it were to collapse POSCO and Changwon for input cost purposes.

Petitioners assert that Congress intended that the application of the major-input rule and collapsing test remain independent of each other, citing the SAA for support. Petitioners assert that by listing price issues separate from cost issues in its explanation of the major-input rule and transactions-disregarded rule, the drafters of the SAA did not intend affiliation price and cost issues to be lumped together, but to be considered separately. Petitioners argue that the legislative history would have suggested that these rules for calculating cost be combined with the collapsing test in connection with circumvention and price issues if the drafters intended this. Instead, petitioners state that the SAA focuses exclusively on cost issues in its explanation of the major-input rule and transactions-disregarded rule. Petitioners assert further that the statutory provisions of the major input rule and transactions disregarded rule focus clearly on cost input issues that are not affected by the collapsing of producers to prevent circumvention, and the Department should thus continue to apply these rules in valuing inputs sold from POSCO to Changwon.

DOC Position

We agree with respondent. The facts in this case are similar to those present in *1997 Flat Products from Korea* wherein the Department held that treating affiliated producers as a single entity for dumping purposes obviates the application of the major-input rule and transactions-disregarded rule because there are no transactions between affiliated persons. As stated in *1997 Flat Products from Korea* at 18430, 18431: the POSCO group {encompassing three separate producers: POSCO, Pohang Coated Steel (POCOS) and Pohang Steel Industries (PSI)} represents *one producer* of certain cold-rolled steel flat products * * * We have determined that a decision to treat affiliated parties as a *single entity* necessitates that transactions among the parties also be valued based on the *group as a whole.* * * * With regard to transfers of inputs among the POSCO group companies we have valued transfers of substrate between the companies as the cost of manufacturing of the substrate {*i.e.*, a major input, also subject merchandise, further manufactured and then resold.} * * * Since we have determined that the POSCO Group is *one entity* for these final results, {the major input rule and fair value provisions} of the Act cannot apply because there are *no transactions between affiliated persons.*

As noted by Changwon, the Department reaffirmed its clear position on this issue in *1998 Flat Product from Korea* at 13185, stating that: because we are treating these companies {POSCO, POCOS, and PSI} as one entity for our analysis, intra-company transactions should be disregarded. * * * {T}he decision to treat affiliated parties as a single entity necessitates that transactions among the parties also be valued based on the group as a whole and as such, *among collapsed entities the fair-value and major-input provisions are not controlling.*

As a result, we have used actual costs in determining the COM for Changwon as well as Dongbang in the final determination.

Comment 8: Changwon's Methodology To Identify the Manufacturer.

In regard to the Department's sales verification report, Changwon states that the Department properly noted that Changwon has reported itself as the manufacturer where appropriate. Changwon states that this is in accordance with the Department's practice to treat the last company involved in the production process as the manufacturer of the resulting merchandise. For example, *in Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 61 FR 13815, 13821 (March 28, 1996), the Department treated Continuous Color Coat, Inc. (''CCC'') as the manufacturer of the subject merchandise sold by CCC, even though CCC purchased the subject merchandise and then performed either painting or galvanizing functions. Similarly, in *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* 62 FR 64559, 64561 (Dec. 8, 1997), some of the respondent companies purchased subject merchandise from third parties and performed minor further manufacturing activities to produce merchandise that was still within the scope of the review. Changwon claims that the above determinations are indistinguishable from the facts pertaining to Changwon and, thus, the Department should continue to utilize Changwon's reported manufacturer for each sale.

Petitioners did not comment on this issue.

DOC Position

We agree with Changwon and given there are no arguments or evidence on the record to suggest otherwise, we have continued to use Changwon as the manufacturer, as reported, where appropriate.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of SSWR from Korea that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Dongbang Special Steel Co., Ltd./ Changwon Specialty Steel Co., Ltd./ Pohang Iron and Steel Co., Ltd.	3.18
Sammi Steel Co., Ltd.	28.44
All Others	3.18

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded the margins determined entirely under section 776 of the Act (facts available) from the calculation of the ''All Others Rate.''

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 777(i) of the Act.

Dated: July 20, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–20017 Filed 7–28–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–820]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Italy

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

EFFECTIVE DATE: July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Irina Itkin, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1776 or (202) 482–0656, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the regulations of the Department of Commerce (the Department) are to the regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Final Determination

We determine that stainless steel wire rod (SSWR) from Italy is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice, below.

Case History

Since the preliminary determination in this investigation on February 25, 1998 (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod from Italy*, 63 FR 10831 (Mar. 5, 1998)), the following events have occurred:

In February 1998, we issued supplemental questionnaires to the two respondents in this case, Acciaierie Valbruna S.r.l. (including its subsidiary Acciaierie di Bolzano SpA) (collectively ''Valbruna'') and Cogne Acciai Speciali S.r.l. (CAS). We received responses to these questionnaires in March 1998.

In March, April, and May 1998, we verified the questionnaire responses of the two respondents, as well as the section A response of an additional company, Rodacciai SpA (Rodacciai). In May 1998, CAS and Valbruna submitted revised sales databases at the Department's request.

The petitioners (*i.e.*, AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., and the United Steel Workers of America, AFL-CIO/CLC) and both respondents submitted case briefs on June 3, 1998, and rebuttal briefs on June 10, 1998. The Department held a public hearing on June 17, 1998.

Scope of Investigation

For purposes of this investigation, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/ or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K–M35FL, are excluded from the scope of the investigation. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon	0.05 max.
Manganese	2.00 max.
Phosphorous	0.05 max.
Sulfur	0.15 max.
Silicon	1.00 max.
Chromium	19.00/21.00.
Molybednum	1.50/2.50.
Lead	added (0.10/0.30).
Tellurium	added (0.03 min).

K–M35FL

Carbon	0.015 max.
Silicon	0.70/1.00.
Manganese	0.40 max.
Phosphorous	0.04 max.
Sulfur	0.03 max.
Nickel	0.30 max
Chromium	12.50/14.00.
Lead	0.10/0.30.
Aluminum	0.20/0.35.

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1996, through June 30, 1997.

Fair Value Comparisons

To determine whether sales of SSWR from Italy to the United States were made at less than fair value, we compared the Export Price (EP) to the Normal Value (NV). Except as noted below, our calculations followed the methodologies described in the preliminary determination.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States,* 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Investigation'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

In instances in which a respondent has reported a non-AISI grade (or an internal grade code) for a product that falls within a single AISI category, we have used the actual AISI grade rather than the non-AISI grade reported by the respondent for purposes of our analysis. However, in instances in which the chemical content range of a reported non-AISI (or an internal grade code) grade is outside an AISI grade, we have used the grade code reported by the respondents for analysis purposes. For further discussion of this issue, see *Comment 3* in the ''Interested Party Comments'' section of this notice, below.

Level of Trade

In the preliminary determination, we conducted a level of trade analysis for both respondents. Based on this analysis, we determined that a level of trade adjustment was not warranted for either company. No party to this investigation has commented on our level of trade determination. Accordingly, for purposes of the final determination, we continue to find that a level of trade adjustment is not warranted.

Export Price

For both respondents, we used EP methodology, 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 CEP methodology was not otherwise indicated. For further discussion, see *Comment 1* in the ''Interested Party Comments'' section of this notice.

A. CAS

We calculated EP based on the same methodology used in the preliminary determination, except as noted below:

1. At the time of the preliminary determination, CAS had not reported U.S. customs duties and U.S. brokerage and handling expenses for certain U.S. sales. Because this information is now on the record and has been verified, we have used it for purposes of the final determination.

2. We made adjustments for other transportation expenses *(e.g.,* demurrage), where appropriate, based on our findings at verification.

B. Valbruna

We made no changes to the methodology used in the preliminary determination.

Normal Value

We calculated NV, cost of production (COP) and CV based on the same methodology used in the preliminary determination, except as noted below.

A. CAS

For the calculation of COP and CV, we adjusted CAS's reported costs by:

1. Adding the accelerated portion of CAS's depreciation expenses (*see Comment 10*);

2. Adding depreciation expenses related to leasehold improvements (*see Comment 11*);

3. Adding back to material costs a deduction made by CAS for the balance in its inventory provision (*see Comment 12*);

4. Deducting finished goods inventory write-downs from CAS's general and administrative expenses (*see Comment 12*);

5. Adding back to material and variable overhead costs a deduction made by CAS for inventory write-up adjustments (*see Comment 13*);

6. Adding unaccrued purchase costs that were excluded by CAS (*see Comment 14*);

7. Reclassifying certain expense and income items from general and administrative expenses to financial expenses (*see Comment 16*);

8. Correcting the double-counting of certain expenses that were reported in both variable overhead and general and administrative (G&A) expenses; and

9. Correcting an error made by CAS in a reported variable overhead adjustment factor.

These adjustments are further discussed in the Memorandum regarding Cost Calculation Adjustments from William Jones to Chris Marsh, dated July 20, 1998.

As in the preliminary determination, we found that, for certain models of SSWR, more than 20 percent of CAS's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of SSWR for which there were no comparable home market sales in the ordinary course of trade, we compared EP to CV in accordance with section 773(a)(4) of the Act.

We made the following changes to our price-to-price or price-to-CV comparisons:

1. In the preliminary determination, we made no adjustment for home market packing costs or warranty expenses because CAS failed to provide the supporting documentation requested by the Department. Because verified packing and warranty information is now on the record, we have used it for purposes of the final determination.

2. Also in the preliminary determination, we made no adjustment for home market credit expenses because CAS based its credit periods on estimates, rather than on the accounts receivable information requested in a supplemental questionnaire. Because verified accounts receivable information is now on the record, we made an adjustment for home market credit expenses for purposes of the final determination.

3. We offset home market freight expenses by a freight revenue factor based on our findings at verification.

B. Valbruna

We made the following changes to our price-to-price comparisons:

1. In the preliminary determination, we made no adjustment for pre-sale warehousing expenses because Valbruna had not appropriately segregated these expenses from its indirect selling expenses. Because this information is now on the record, we have used it for purposes of the final determination. *See Comment 18.*

2. In the preliminary determination, we also made no adjustment for certain inland freight expenses because these expenses were based on data outside the POI. Because Valbruna revised its freight calculations to utilize POI data, we have adjusted for these freight expenses in the final determination.

Currency Conversion

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank in accordance with section 773A of the Act.

Interested Party Comments

General Issues

Comment 1: CEP vs. *EP Methodology.* The petitioners argue that the Department should treat all of the respondents' sales through their affiliated parties in the United States as CEP transactions. According to the petitioners, the Department's practice in this area is to classify sales as CEP sales when the U.S. affiliated party has more than an incidental involvement in making the sale (*e.g.,* soliciting sales, negotiating sales contracts or prices) or performs other selling functions. As support for this assertion, the petitioners cite *Certain Cold-Rolled and Corrosion-Resistant Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13170, 13172 (Mar. 18, 1998) (*Korean Steel*); and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod from Spain,* 63 FR 10849, 10852 (Mar. 5, 1998) (*SSWR from Spain Preliminary*).

The petitioners allege that documents obtained at verification demonstrate that the affiliated parties were substantially involved in the sales process and were not mere communication links with their Italian parents. Specifically, the petitioners assert that these documents show that the affiliates served as contacts for the U.S. customers and were involved in the negotiation of sales terms and prices.

Regarding CAS, the petitioners maintain that its U.S. affiliate, CAS USA, was unable to demonstrate at verification that CAS controlled all pricing decisions in Italy, because: 1) CAS USA was unable to provide any customer inquiries during the POI; and 2) the post-POI document proffered by CAS merely showed that the Italian sales manager approved a portion of the order. Morever, the petitioners note that CAS USA recorded the purchase and resale of SSWR in its accounting records, collected payment from the customer, took title to the merchandise, and stored it in a U.S. warehouse while it awaited delivery to the U.S. customer.

According to the respondents, the Department correctly found in the preliminary determination that all of their U.S. sales were EP transactions. The respondents note that the Department's long-standing practice is to classify sales as EP if the sale occurred prior to importation and the following three criteria are met: 1) the merchandise is shipped directly to the U.S. customer without entering the affiliate's inventory; 2) this is the customary channel of trade for the affected sales; and 3) the affiliate acts only as a sales document processor and communications link. In support of their position, the respondents cite *Certain Cold-Rolled and Corrosion-Resistant Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews,* 62 FR 18404, 18423 (Apr. 15, 1997); *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, 38175 (July 23, 1996); and *Final Results of Antidumping Duty Administrative Reviews; Certain Corrosion-Resistant Carbon Steel Flat Products from Canada,* 63 FR 12725 (Mar. 16, 1998).

The respondents argue that their sales meet each of the above criteria. Regarding the first two criteria, they state that subject merchandise never enters their physical inventory in the United States and that this sales channel is their customary channel of trade, CAS argues that CAS USA exerts no physical control over the subject merchandise, because almost all sales are either shipped directly to the U.S. customer or to the customer's storage facility for its own account. Moreover, CAS asserts that any warehousing performed at the port is done merely while unloading occurs; this merchandise is destined for a specific customer and cannot be sold to another party. Thus, CAS notes that SSWR never enters CAS USA's physical inventory.

Regarding CAS USA's involvement in the sales process, CAS asserts that CAS USA's role is ancillary or incidental, because CAS USA simply functions as a paper processor and communications link with CAS. CAS asserts that it controls all aspects of the marketing and sales process from Italy. Specifically, CAS maintains that CAS USA has no negotiating or pricing authority with regard to SSWR, but rather only forwards sales inquiries from U.S. customers to Italy. According to CAS, because most of its pricing instructions to CAS USA are via telephone, the absence of written records is not significant.

CAS asserts that the decision made in *Korean Steel* is not applicable here. Specifically, CAS asserts that the U.S. affiliate of one of the two respondents in that case had almost complete negotiating control over the sale, including the authority to write and sign sales contracts and to set prices, while the U.S. affiliate of the other respondent engaged in significant after-sale activity.

Valbruna notes that all of its U.S. merchandise was shipped directly to the U.S. customer without entering a warehouse in the United States. Moreover, Valbruna notes that its U.S. affiliates act only as paper processors and communications links with their parent companies, due to the time difference that exists between the United States and Italy. Valbruna maintains that it negotiates all sales and makes all pricing decisions in Italy, confirms the sale, determines the production and delivery schedule, arranges for the delivery, invoices the customer, and collects payment. According to Valbruna, the evidence of U.S. selling activity cited by the petitioners was either taken out of context or misinterpreted. For example, Valbruna notes that, in one instance, the petitioners cited a fax relating to non-subject merchandise and, in another, merely referenced a pro forma closing statement to a letter.

DOC Position

We agree with the respondents and have continued to classify their U.S. sales as EP transactions for purposes of the final determination. We have based this finding on an analysis of the three factors that the Department uses to determine the appropriate classification of U.S. sales transactions (*i.e.*, customary channel of trade, method of shipment, and the affiliate's role in the sales process).

Regarding the first two criteria, we find that both respondents shipped their merchandise directly to the U.S. customer without the merchandise entering the affiliate's inventory and that this constituted the customary channel of trade for the affected sales. Thus, we find that the first two criteria for designating these sales as EP transactions have been met. Regarding the petitioners' contention that CAS USA warehoused SSWR at the port, we disagree that this is relevant. We noted at verification that the warehousing performed by CAS USA was independent of the company's normal physical inventory maintained for non-subject products. Because the merchandise never entered CAS USA's physical inventory, we consider the criterion for designating the sales as EP transactions to be met.

Regarding the third criterion, we find that both respondents' affiliates acted as processors of paperwork and communication links with their Italian parent companies for sales of subject merchandise. Specifically, we confirmed at verification that both companies have no authority to negotiate prices or sales terms with the customer, they do not contact customers on their own initiative, and they perform no marketing activities or after-sale support functions. We found that these companies received requests for quotations from customers, via either fax or telephone, which they then forwarded on to Italy for approval or counter-offer. For this reason, we find that the significant selling activities for the sales in question took place in Italy, while those activities performed in the United States (*e.g.*, invoicing, collecting payment, etc.) were ancillary or incidental to the sale.

Regarding the company-specific concerns raised by the petitioners, we note that CAS USA was operational for only four months during the POI. Consequently, while CAS USA was able to provide only a limited number of examples of written communication between itself and its parent, this is sufficient to demonstrate that pricing decisions are made in Italy. Regarding Valbruna, we find that the statements cited by the petitioners were taken out of context, as asserted by Valbruna.

In addition, we note that the petitioners' citation to *Korean Steel* does not apply here. In *Korean Steel*, one of the U.S. affiliates had the authority to write and sign sales contracts, while another performed significant after-sale support functions. Neither of these conditions apply in this case. Likewise, we find that *SSWR from Spain Preliminary* also is not applicable. In that case, not only was the respondent unable to demonstrate that pricing decisions were made in Spain, but the U.S. affiliate admitted, and the Department verified, that it had the authority to set prices for certain sales without consultation with its parent and initiated contact with the U.S. customers on its own authority. None of these facts are present here.

Consequently, we have continued to classify the respondents' sales through their U.S. affiliated parties as EP sales for purposes of the final determination. We also have continued to treat CAS's sales through AST USA as EP sales for purposes of the final determination because the sales process for these sales is nearly identical to that of sales through CAS USA. Our decision here is consistent with our decisions on the matter in the concurrently published final determinations on SSWR from Spain and Taiwan.

Comment 2: Date of Sale.

According to the petitioners, the Department should continue to use purchase order date as the date of sale for CAS and revise its date of sale methodology for Valbruna to use the date of sales confirmation instead of invoice date. The petitioners assert that use of these dates is consistent with both the Department's regulations and its practice, because the material terms of sale are set at the time of the purchase order/sales confirmation. As support for Department precedent in this area, the petitioners cite memoranda issued in the 1995–1996 new shipper review on stainless steel flanges from India and the 1996–1997 new shipper review on stainless steel bar from India, in which the Department used the date of purchase order as the date of sale, as well as the *Notice of Final Results of Antidumping Duty Administrative Review; Canned Pineapple Fruit from Thailand,* 63 FR 7392, 7394 (Feb. 13, 1998), in which the Department used the date of a sales contract.

The petitioners note that, not only do both respondents produce SSWR to order, but the sales documents reviewed at verification also showed that the price, quantity, product specifications, and shipment dates were established when the order was approved. Further, the petitioners note that the lag-times between shipment and invoicing (for CAS) and sales confirmation and invoicing (for Valbruna) are significant.

The petitioners contend that Valbruna should not be allowed to report an incorrect date of sale merely because the proper date is not readily available in a computerized database, especially given that Valbruna was able to provide the proper information in a previous antidumping duty investigation involving stainless steel bar. According to the petitioners, the Department should use the average number of days between sales confirmation and invoice date, as observed at verification, in order to construct a theoretical date of sales confirmation. Specifically, the petitioners contend that this average period should be subtracted from the reported invoice date to derive the date of sale, and that this resulting date should be used when making currency conversions.

According to CAS, the Department erred in its preliminary determination by using the purchase order date instead of the invoice date as the date of sale. CAS argues that the Department's regulations establish a strong presumption in favor of using invoice date as the date of sale for purposes of antidumping proceedings and that the Department should adhere to this presumption for several reasons.

First, CAS asserts that, because the exact amount of the alloy surcharge is not known until the time of shipment, it would be distortive to compare U.S. prices to Italian prices based on the purchase order date as the date of sale. Second, CAS states that use of invoice date eases the reporting and verification burdens because it is the date recorded in CAS's accounting records in the ordinary course of business. Third, CAS argues that using the purchase order date as the date of sale establishes bad precedent, in that one of the purposes of the Department's current regulations was to simplify reporting requirements and improve the predictability of the antidumping law. CAS notes that the circumstances under which the Department would depart from its presumption in favor of the invoice date are not present here, because CAS neither sells large custom-made merchandise nor sells pursuant to long term contracts. As support for this position, CAS cites to the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27349, 27350 (May 19, 1997) (*Final rule*).

According to Valbruna, it appropriately reported the date of invoice as the date of sale. Specifically, Valbruna notes that the Department not only instructed it to report the date of invoice, but the Department also verified that this information was reported accurately.

Valbruna maintains that the petitioners' reliance on the length of time between sales confirmation and invoicing is misplaced. According to Valbruna, the Department's standard test is to compare the dates of shipment and invoicing, rather than the dates of order confirmation and invoicing. As support for this contention, Valbruna cites the Department's questionnaire at Appendix I–4. Valbruna asserts that the time between when it ships its merchandise and when it issues its invoices is inconsequential, because this period is a matter of days, not weeks or months.

Finally, Valbruna asserts that the petitioners' reference to the stainless steel bar investigation is equally misplaced. According to Valbruna, in the bar case, the order confirmation used as the date of sale was the confirmation issued by the U.S. subsidiary. Valbruna asserts that, in this investigation, all of the sales documentation is issued by Valbruna in Italy. Consequently, Valbruna claims that there is no relationship between the dates of sale used in the bar case and here.

DOC Position

We disagree with CAS, in part, and agree with Valbruna. The Department treats the invoice date as the date of sale under normal circumstances. As both discussed in the preamble to the Department's regulations and noted by CAS, use of invoice date simplifies the reporting and verification of information and enhances the predictability of outcomes. *See Final rule* at 27348. The preamble, however, confirms that the Department retained the flexibility to use a different date as the date of sale in appropriate circumstances. *See Final rule* at 27348, 27349 and 27411 (19 CFR 351.401(i)). In the preamble to the regulations, the Department indicated that use of invoice date may not be appropriate in situations involving large, custom-made products or long-term contracts. *See Final rule* at 27349, 27350. The Department further articulated conditions under which it would consider departing from the invoice date as the date of sale in its questionnaire. Therein, the Department stated:

> [G]enerally, the date of sale is the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business, provided that: (1) the exporter does not use long-term contracts to sell its subject merchandise; and (2) there is not an exceptionally long period between the date of invoice and the date of shipment. *See* letter from James Maeder to William Silverman, September 19, 1997, at Appendix I–4.

In the instant investigation, neither respondent sold subject merchandise pursuant to long-term contracts, nor did they sell the type of large custom-made merchandise envisioned in the preamble to the regulations. However, in the case of CAS, a significant period of time often passes between the date of shipment and the date of invoice. Therefore, because the material terms of sale are normally set no later than the date of shipment, we find that the invoice date is not an appropriate date of sale for CAS. Having ruled out the invoice date for CAS, we then determined that the purchase order date, which we used in the preliminary determination, best reflected the date at which the material terms of sale were established.

We disagree with CAS's assertion that it would be distortive to compare U.S. and Italian prices using the purchase order as the date of sale. CAS's argument relies upon the fact that the alloy surcharges are not known until the time of shipment. However, this is not accurate, as the final amount paid by the customer often is determined at the time of the purchase order. Nevertheless, even assuming that the purchase order date might not be appropriate in some instances, use of this date does not create distortion because: (1) we used it as the date of sale for both markets; and (2) we determined that the length of time between purchase order and invoice date was comparable in the two markets. Given those circumstances and the fact that we compare POI-average NVs to POI-average EPs, we find that no material distortion exists in our price-to-price comparisons due to minimal timing differences related to the alloy surcharges received by CAS.

For Valbruna, we have continued to use invoice date as the date of sale. As discussed above, our presumption is that the invoice date is the appropriate date of sale unless the facts suggest otherwise. For Valbruna, there is no significant difference between the shipment and invoice dates, and we have no reason to believe that the material terms of sale are set significantly prior to the date of invoice. Moreover, the fact that a different date of sale was used for Valbruna in the stainless steel bar case is irrelevant because each antidumping proceeding is distinct and based on its own record.

Comment 3: Use of AISI Grade Designations for Product Matching.

According to the petitioners, the Department should perform its model matches using standard AISI grades for steel, rather than the respondents' internal grade designations.

The respondents agree, noting that the Department verified that they appropriately classified each of their internal grades into its corresponding AISI category where possible.

DOC Position

We agree. We examined the respondents' grade classifications at verification and confirmed that both of the respondents appropriately classified each of their internal SSWR grades into the corresponding AISI category. Accordingly, we have utilized this information for purposes of the final determination.

Comment 4: Corrections Arising From Verification.

According to both the petitioners and the respondents, the Department should correct the respondents' data for clerical errors found during verification.l

DOC Position

We agree. We have made the appropriate corrections for purposes of the final determination. These corrections are further discussed in a separate memorandum regarding the calculation adjustments performed for this company. (*See* Memorandum regarding Calculations Performed for Acciaierie Valbruna Srl/Acciaierie di Bolzano SpA (Valbruna) for the Final Determination in the Antidumping Duty Investigation on Stainless Steel Wire Rod from Italy from Shawn Thompson to The File, dated July 20, 1998.)

Specific Issues

A. CAS

Comment 5: Treatment of U.S. Sales Involving AST USA: In the preliminary determination, the Department treated AST USA.

A party unaffiliated with CAS, as a U.S. sales agent. According to the petitioners, both CAS's description of AST USA's sales process and the U.S. sales documents contained in the questionnaire responses and reviewed at verification indicate that AST USA was a customer rather than a sales agent. Specifically, the petitioners cite CAS's March 16, 1998, supplemental response, in which CAS stated that it ''has concluded that it may be more appropriate to consider AST USA as CAS's first unaffiliated U.S. customer.'' Accordingly, the petitioners state that, because the Department is required to base U.S. price on the sale to the first unaffiliated customer, it must base U.S. price on the price between CAS and AST USA for purposes of the final determination.

Nonetheless, the petitioners contend that, should the Department determine that AST USA acted as a sales agent, the Department should also determine that sales made through AST USA should be classified as CEP sales for the same reasons that sales made through CAS USA should be classified as CEP sales. *See Comment 1.*

Notwithstanding its March 16, 1998, statement, CAS maintains that AST USA operated as CAS's unaffiliated sales agent and not as its U.S. customer. Therefore, CAS maintains that the Department should continue to base U.S. price on the price that AST USA charged its unaffiliated customers.

DOC Position

We agree with CAS. Based on the information on the record, we find that AST USA acted as a sales agent for CAS in making sales of SSWR in the United States. Specifically, AST USA had a formal sales representative agreement with CAS which outlined the relationship between the parties during the POI. According to this agreement, AST USA was responsible for taking orders from U.S. end-user customers on behalf of CAS, for which AST USA, in turn, earned a sales commission. This agreement stated explicitly that CAS company officials have exclusive authority to make decisions regarding sales terms. *See* CAS Home Market Verification Report, May 13, 1998, at 4.

In addition to the conditions outlined in the formal agreement, we found that CAS knew AST USA's customers and it shipped its merchandise directly to them in the United States. At verification, we found that AST USA performed essentially the same role in the sales process as did CAS's affiliated sales agent, CAS USA. *See* CAS USA Verification Report, May 22, 1998, at 5.

For these reasons, we have continued to treat AST USA as a sales agent for purposes of the final determination. Moreover, as discussed in *Comment 1*, we have also continued to treat sales through AST USA as EP sales.

Comment 6: Treatment of Commissions Paid to AST USA.

The petitioners argue that the Department should make an adjustment for commissions paid to AST USA for selling the subject merchandise in the United States. As support for their position, the petitioners cite section 772(d)(1)(A) of the Act and 19 U.S.C. 1677a(d)(1)(A).

CAS agrees that the Department should adjust for commissions paid to AST USA for purposes of the final determination.

DOC Position

Where U.S. price is based on EP, it is the Department's practice to adjust for commissions paid to unaffiliated parties under the circumstance of sale provision set forth in section 773(a)(6) of the Act. (*See* also 19 CFR 351.410(e).) Because AST USA is an unaffiliated party that received commissions related to EP sales during the POI, we have made a circumstance-of-sale adjustment to NV to account for these commissions for purposes of the final determination.

Comment 7: Treatment of Commissions Paid by CAS to CAS USA.

The petitioners assert that the Department should treat the difference between the price that CAS charged CAS USA and the price that CAS USA charged the unaffiliated customer as a commission for purposes of the final determination. The petitioners further assert that the Department should adjust for these commissions, regardless of whether the Department determines CAS's U.S. sales to be EP or CEP sales. If the Department finds CAS's U.S. sales to be CEP sales, the petitioners assert that the Department should use the commission as a surrogate for indirect selling expenses, given that CAS was not required to report its actual indirect selling expenses.

According to CAS, the spread between the price that CAS charged CAS USA and the price that CAS USA charged the unaffiliated U.S. customer accounts for costs that CAS would have incurred in Italy, but for the relocation of the incidental services that CAS USA performs on behalf of CAS in the United States. Further, CAS states that, since these expenses would not be deductible from the U.S. price in an EP scenario, the Department should not deem the difference to be a commission and, therefore, should not make a commission adjustment for purposes of the final determination.

DOC Position

We agree with CAS. The Department's current practice is to not make an adjustment for affiliated party commissions in EP situations because we consider them to be intra-company transfers of funds to compensate an affiliate for actual expenses incurred in facilitating the sale to unaffiliated customers. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago,* 63 FR 9177, 9181 (Feb. 24, 1998) and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 63 FR 33320, 33345 (Jun. 18, 1998). Consequently, we have not adjusted U.S. price for these commissions for purposes of the final determination.

Regarding the petitioners' argument concerning the commission adjustment as a surrogate for indirect selling expenses, this issue is moot because we have determined that the sales made by CAS through CAS USA are EP sales. *See Comment 1.*

Comment 8: Treatment of Unreported Sales.

During the U.S. verification, the Department discovered that CAS did not report any POI sales with invoices issued in 1998. According to the petitioners, for purposes of the final determination, the Department should base the margins for these sales on either: (1) the average of the margins alleged in the petition; or (2) the highest non-aberrant calculated margin. As support for its position, the petitioners cite *Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from France*, 58 FR 68865, 68869 (Dec. 29, 1993) (*SSWR from France*), in which the Department used best information available to determine the margin for sales that were not reported due to a computer error.

According to CAS, its failure to report the sales in question was inadvertent. Specifically, CAS notes that, at the time the Department requested that sales data be submitted on an order date basis, the invoices in question had not yet been issued and, therefore, were not available for inclusion in the sales listing. However, CAS maintains that, because the prices associated with these sales are typical of other POI sales, no adverse inference is warranted.

CAS asserts that the situation in *SSWR from France* is distinguishable from the present case. Specifically, CAS states that the French sales were omitted due to computer error, whereas its own sales data were not available at the time of the submission of the relevant sales listing. Furthermore, CAS notes that this issue would be moot if the Department were to use invoice date as the date of sale (*see Comment 2*, above).

DOC Position

We agree with the petitioners. Although the invoice data did not exist at the time that CAS submitted its January 1998 sales listing, the purchase order and other transaction-related information did exist when CAS completed its questionnaire response. Moreover, the invoice information existed and was available when CAS submitted its March 1998 supplemental response. Because CAS failed to provide a complete database, we have based the margin for the unreported U.S. sales on facts available.

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (SAA). CAS's failure to report the information in question to the Department's questionnaire demonstrates that it has failed to act to the best of its ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available to this company, an adverse inference is warranted.

As adverse facts available, we have selected a margin from the fair value comparisons which were performed for CAS's reported sales that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is indicative of CAS's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied. To that end, we selected a margin for sales of a product that involved a substantial commercial quantity and fell within the mainstream of CAS's transactions based on quantity. Finally, we found nothing on the record to indicate that the sales of the product we selected were not transacted in a normal manner. For details regarding the methodology used to select the margin for the sales in question, see the Sales Calculation Memorandum from Irina Itkin to the File, dated July 20, 1998.

Comment 9: Treatment of Unpaid Sales.

At verification, the Department found that CAS had not received payment for a small number of U.S. sales. According to the petitioners, the Department should use the date of the final determination as date of payment for these transactions. As support for their position, the petitioners cite *Certain Stainless Wire Rods from France; Final Results of Antidumping Duty Administrative Review*, 61 FR 47874, 47881 (Sep. 11, 1996).

DOC Position

We disagree. The Department's recent practice regarding this issue has been to use the last day of verification as the date of payment for all unpaid sales. *See Brass Sheet and Strip from Sweden; Final Results of Antidumping Administrative Review*, 60 FR 3617, 3620 (Jan. 18, 1995), *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909 (Feb. 23, 1998), and *Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 63 FR 12752, 12757 (Mar. 16, 1998). Accordingly, we have used the last day of CAS's U.S. verification as the date of payment for all unpaid transactions or portions thereof.

Comment 10: Depreciation Expenses.

The petitioners argue that the Department should increase CAS's COP and CV data for accelerated depreciation expenses, which were excluded from its submitted costs. The petitioner notes that the Department's policy is to calculate COP/CV based on the normal accounting records maintained by the respondent and that CAS's income statement reflects the accelerated depreciation expenses in question.

CAS notes that Italian fiscal law allows companies to recognize additional depreciation expense (*i.e.*, accelerated depreciation) on new equipment in an amount equal to the ordinary expense that would be calculated using a straight-line depreciation method. According to CAS, the purpose of recognizing such additional expense is to reduce taxable income. CAS argues that, because accelerated depreciation does not accurately reflect the company's actual cost of manufacturing, it excluded the accelerated portion of depreciation expense recognized in the company's financial statements. Specifically, CAS claims that the use of both ordinary straight-line depreciation and accelerated depreciation would double its depreciation expenses for qualified assets and, thus, cannot reasonably reflect the company's actual manufacturing costs. As support for its position, CAS cites to *Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway*, 56 FR 7661, 7665 (Feb. 25, 1991) (*Norwegian Salmon*), in which the Department included only the respondent's ordinary depreciation expenses in COP and CV.

DOC Position

We agree with the petitioners and have adjusted CAS's submitted costs to reflect the total depreciation expense reported in its financial statements. Section 773(f)(1)(A) of the Act states:

> [c]osts shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, as appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise. The administering authority shall consider all available evidence on the proper allocation of costs . . . if such allocations have been historically used by the exporter of producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs.

For the past three years, CAS has chosen to use an accelerated depreciation methodology, which is consistent with Italian generally accepted accounting principles (GAAP), to calculate depreciation expenses on both its audited financial statements and its tax return. Accelerated depreciation methods, such as the one applied by CAS, provide for a higher depreciation charge in the years immediately following an asset's acquisition, while lower charges are recorded in later periods. We disagree with CAS's assertion that the use of this accelerated depreciation methodology results in an inaccurate cost of manufacturing. Other than merely stating that the accelerated depreciation method results in a greater expense than would be calculated using a straight-line methodology, CAS has provided no evidence demonstrating that its depreciation methodology is distortive.

According to *Intermediate Accounting: 8th Edition* (Kieso & Weygandt, 1995), the use of an accelerated depreciation methodology is neither wrong nor distortive. The text notes that an accelerated method may, in some instances, be more appropriate than a straight-line depreciation method that records an equal amount of depreciation each year an asset is in service. As the text states, ''The matching concept does not justify a constant charge to income. If the benefits from the asset decline as the asset gets older, then a decreasing charge to income would better match cost to benefits.''

In past cases, the Department has included the accelerated portion of depreciation expenses when such an approach is reflected in the respondent's financial statements, in accordance with the home country GAAP, and the respondent has not demonstrated that the use of accelerated depreciation is distortive. *See, e.g., Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part,* 62 FR 1954, 1958 (Jan. 14, 1997), in which COP was calculated using the respondent's financial records, which reflected the historical use of accelerated depreciation in accordance with Brazilian GAAP; and *Notice of Final Determination of Sales at Less Than Fair Value: Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom,* 61 FR 51411, 51418 (Oct. 2, 1996), in which COP was calculated using the respondent's financial records, which historically used an accelerated depreciation method. Our practice is to adhere to a respondent's recording of costs in accordance with GAAP of its home country if we are satisfied that such records reasonably reflect the costs of producing the subject merchandise. *See, e.g., Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 42833, 42846 (Aug. 19, 1996); and section 773(f)(1)(A) of the Act. This practice has been sustained by the Court of International Trade (CIT). *See, e.g., Laclede Steel Co. v. United States,* Slip Op. 94–160 at 21–25 (CIT Oct. 12, 1994) (upholding the Department's rejection of the respondent's reported depreciation expenses in favor of verified information from the company's financial statements that were consistent with Korean GAAP); and *Hercules, Inc. v. United States,* 673 F. Supp. 454 (CIT 1987) (upholding the Department's reliance on COP information from the respondent's normal financial statements maintained in conformity with GAAP).

Comment 11: Leasehold Improvements.

The petitioners argue that the Department should adjust CAS's COP and CV data to include the cost of leasehold improvements, which were excluded from its submitted costs. The petitioners note that the Department's policy is to calculate COP and CV based on the normal accounting records maintained by the respondent and that CAS's income statement reflects the cost of leasehold improvements.

CAS notes that, during 1995 and 1996, it made several improvements to leased assets, including a new production facility roof, a new cafeteria, and an infirmary. According to CAS, under Italian GAAP, lessors are prohibited from capitalizing and depreciating leasehold improvements and, instead, are required to expense such costs in the year incurred. CAS argues that the inclusion of the full value of its leasehold improvements in COP/CV would be highly distortive, given that these expenditures represent a long-term investment in fixed assets and have a multi-year usefulness. CAS proposes that a logical alternative to excluding leasehold improvement costs in total would be to depreciate the cost over the thirty-year term of its lease.

DOC Position

We agree with the petitioners, in part. Section 773(f)(1)(A) of the Act states that COP and CV shall normally be calculated based on the books and records of the exporter or producer of the merchandise if such records are kept in accordance with GAAP of the exporting country and if such records reasonably reflect the costs associated with the production of the merchandise under investigation. Because the leasehold improvements made by CAS represent costs that were associated with the production of the merchandise under investigation, we find that it is appropriate to include them in the calculation of its COP and CV.

We disagree with the petitioners, however, that the full cost of the leasehold improvements should be recognized in the year incurred. These costs, as argued by CAS, are expected to benefit future periods. We therefore consider it appropriate, in this instance, to deviate from Italian GAAP by capitalizing and depreciating these costs over a reasonable period of time, not to exceed the actual term of the lease. CAS's proposal of a thirty-year depreciation period would be appropriate if the company could be expected to benefit from the improvements for that period of time. However, the useful life of CAS's fixed assets, as submitted, indicates that a shorter period is appropriate for the types of leasehold improvements in question. Accordingly, we calculated depreciation expense for the leasehold improvements made by applying the accelerated depreciation methodology used in CAS's normal accounting records to the useful life of the assets.

Comment 12: Adjustment Related to the Inventory Write-down Provision.

The petitioners argue that the Department should value material costs in accordance with CAS's financial statements. Specifically, the petitioners argue that the Department should disallow CAS's submitted offset to materials costs for its inventory write-down provision. According to the petitioners, the Department's policy is to calculate COP and CV based on the normal accounting records maintained by the respondent.

CAS argues that it properly reduced its materials costs for the inventory write-down provision. CAS notes that it adjusts the provision at the end of each fiscal year to account for fluctuations in the values of its raw materials, work-in-process (WIP), and finished goods inventories, which are stated on a last-in, first-out (LIFO) basis. CAS claims that the provision reflects the difference between the LIFO values of its inventories and their current market values. CAS argues that, consistent with this approach, its reported materials costs reflect the deduction of the inventory write-down provision from the cost of materials consumed as reported on its financial statements. As support for its position, CAS cites to *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, 2118 (Jan. 15, 1997), in which the Department stated that the respondent's inventory write-downs ''are not actual costs but are a provisional reduction-in-

inventory value in anticipation of a lower resale value.''

According to CAS, the Department noted at verification that CAS included the 1996 addition to its inventory write-down provision in its reported G&A expenses. CAS argues that, should the Department revise the reported COP/CV data in order to exclude the provision, it should make a corresponding adjustment by removing the 1996 addition from the G&A calculation to avoid double-counting this expense.

DOC Position

We agree with the petitioners that CAS should not have reduced its material costs by the value of its inventory write-down provision. The provision that CAS established for inventory value fluctuations is a balance sheet account that relates to CAS's inventory values at the end of the year and has no impact on the actual cost of materials used in production. Accordingly, in calculating COP and CV, there is no basis for reducing the material costs actually incurred by the full amount of the inventory write-down provision on CAS's balance sheet.

We disagree with CAS's assertion that, because we have not reduced the company's materials costs by the full amount of the inventory write-down provision, the Department must exclude from G&A expenses the amount of the change to the provision that was reported as an expense in CAS's 1996 income statement. Specifically, only the incremental increase or decrease in this provisional account is recognized by the company on its income statement and the incremental change during 1996 was reported by CAS as a G&A expense item for purposes of its submission. The incremental change in the provision is the only portion of the provision that may be appropriate to include in CAS's COP and CV calculations. In this case, however, the full amount of the increase to the provision should not be included in the calculation of COP and CV because the portion of the write-down associated with finished goods inventory is not a cost of production to CAS. Unlike the complete write-off of unsaleable merchandise which the Department considers a cost, this type of inventory write-down arises when a company determines that the market value for its finished goods inventory is less than its cost to produce the merchandise. Consequently, it would be unreasonable to include such write-down amounts, which arise only because CAS cannot sell the merchandise for what it cost to produce, as an additional cost of production.

We disagree with CAS's assertion, however, that write-downs associated with raw materials and WIP inventories should also be excluded from COP and CV. Both raw materials and WIP inventories are inputs into the cost of manufacturing the merchandise. It is the Department's practice to recognize the full amount paid to acquire production inputs, which are included in raw materials and WIP inventories, in determining the cost of producing the merchandise.

Consequently, for the final determination, we removed the offset to CAS's material costs for the inventory write-down provision. Additionally, we included in G&A expense only the incremental change in CAS's inventory write-down provision that is associated with raw materials and WIP inventories.

Comment 13: Materials and Spare Parts.

The petitioners argue that CAS inappropriately reduced its 1997 materials and spare parts costs for an inventory ''write-up'' adjustment that is not reflected in its financial statements or normal accounting records. CAS applied the adjustment to the costs shown in its normal accounting records to derive the reported costs.

CAS argues that, in calucating its reported 1997 material and spare parts costs, it adjusted its inventory based on prices paid during the period. CAS argues that such an adjustment is necessary to calculate its cost of production on a current basis, although the adjustment is not reflected in its financial statements.

DOC Position

We agree with the petitioners. It is the Department's practice to base the cost of manufacturing on costs incurred during the period of investigation, as reflected in CAS's normal books and records, rather than on current prices. In accordance with section 773(f)(1)(A) of the Act, the Department accepts the inventory valuation methods historically used by the respondent unless it can be shown that these methods distort the reported costs. The simple fact that costs would be lower using an alternative inventory valuation method is not a valid reason for deviating from a company's normal books and records. Accordingly, we have removed the adjustment applied by CAS in calculating its submitted costs.

Comments 14: Accruals for Previous Year Purchases.

The petitioners argue that the Department should make an adjustment for supplier invoices related to 1996 purchases that were excluded from CAS's reported costs.

CAS argues that the Department should not adjust its submitted costs. According to CAS, at year-end 1996, it properly accrued expenses on purchases for which it anticipated it would receive invoices in 1997. CAS claims that its accrual was based on a reasonable estimate of the amounts on the invoices to be received and was prepared in accordance with Italian GAAP and the company's normal internal accounting policies. CAS notes that it recorded the difference between its accrual and the invoiced amounts as extraordinary expense in 1997, and that such treatment is also consistent with Italian GAAP.

DOC Position

We agree with the petitioners. While CAS's treatment of the supplier invoices received in 1997 for 1996 purchases may have been in accordance with Italian GAAP, it does not properly reflect the cost of production during the period of investigation. The recording of an accrual is a normal part of the year-end accounting process and, as CAS notes, is based on an estimate. At the end of 1996, CAS recorded accruals for supplier invoices yet to be received for purchases made during the year. In early 1997, it became known that CAS's 1996 accruals were understated and, therefore, its 1996 production costs were understated. The POI encompasses portions of both 1996 and 1997 and, thus, it is proper to adjust the submitted amounts to include the correct input costs rather than an incorrect estimate. We have therefore corrected for the understated production costs for purposes of the final determination.

Comment 15: Offset to G&A Expenses.

The petitioners claim that the Department should remove an offset that was included in CAS's G&A expense calculation. The offset amount represents a correction of prior year accruals and is classified in the financial statements as non-operating management profits. The petitioners argue that a correction of prior year accruals does not relate to operations during the POI and, therefore, should not be used to offset actual G&A expenses incurred during the POI.

DOC Position

We agree with the petitioners. Since CAS failed to provide details surrounding the over-accrued amounts which were corrected during the POI, we are unable to determine exactly what merchandise the accruals relate to. The prior year accruals being corrected may relate solely to non-subject merchandise (in which case we would exclude the correction), solely to subject merchandise (in which case we would apply the amount to offset the cost of manufacturing), or to the general production activity of the company as a whole (in which case we would apply the offset to G&A expenses). Since we do not know which activities these over-accruals relate to, we excluded the correction of the prior year's accruals from the submitted COP and CV computations.

Comment 16: Foreign Exchange Gains and Losses.

The petitioners argue that the Department should revise CAS's reported G&A expense calculation to exclude certain foreign exchange gains and losses related to hedging. The petitioners note that such amounts were classified in CAS's financial statements as financial income or financial expense and argue that the Department should treat these amounts in the same manner.

CAS agrees with the petitioners regarding the classification of foreign exchange gains and losses.

DOC Position

We agree. The foreign exchange gains and losses incurred by CAS on its hedging operations are more properly classified as financial income and expenses. Accordingly, we reclassified these amounts for the final determination.

Comment 17: Double-Counting of Currency Option Expenses.

CAS argues that the Department, in making its preliminary determination, improperly adjusted CAS's financial expenses to include an amount related to currency option expenses. CAS notes that this amount was already included in its G&A expense calculation and, as a result, the Department double-counted these costs in calculating COP and CV.

DOC Position

We agree. We have corrected the G&A expense calculation to exclude the amount that was double-counted.

B. Valbruna

Comment 18: Home Market Warehousing Costs.

According to Valbruna, the Department erred in its preliminary determination by not adjusting for various costs incurred at its home market service centers. Specifically, Valbruna contends that the Department should have deducted its service center costs from NV under the warehousing provision of the regulations (*i.e.,* 19 CFR 351.401(e)(2)), because one of the functions of the service centers is warehousing. However, Valbruna asserts that, if the Department does not consider all service center costs to be warehousing for purposes of the final determination, it should, at a minimum, deduct all costs directly associated with warehousing.

The petitioners argue that the Department should continue to disallow an adjustment for Valbruna's service center costs. The petitioners cite the Department's preliminary concurrence memorandum, which stated that the Department denied Valbruna's claim for the preliminary analysis because: 1) the service centers were merely branches or sales offices of Valbruna; and 2) only one of the service centers carried inventory of SSWR. Accordingly, the petitioners maintain that, if the product under investigation is not maintained in inventory at the service centers, there is no basis for subtracting from NV any warehousing costs incurred there.

DOC Position

We agree with Valbruna, in part. Under 19 CFR 351.401(e)(2), the Department considers warehousing expenses that are incurred after the merchandise leaves the original place of shipment to be movement expenses. Accordingly, to the extent that Valbruna incurred expenses relating to the warehousing of SSWR at its service centers, we have treated these expenses as movement costs.

Regarding those expenses incurred at the service centers which relate to selling functions, however, we disagree with Valbruna that these expenses also constitute part of its warehousing. Rather, we find that these expenses constitute indirect selling expenses. Because we have found U.S. sales to be EP sales and we are making no offsets for U.S. commissions under 19 CFR 351.410(e), we have disregarded these expenses for purposes of the final determination.

Comment 19: Use of Long-Term Debt in the Calculation of the Home Market Interest Rate.

Valbruna argues that the Department should base the calculation of its home market interest rate on the company's interest experience on all of its current liabilities, not just those arising from short-term obligations. Specifically, Valbruna asserts that the Department should include in its calculation the short-term portion of a long-term debt, because this debt is classified as a current liability on the company's balance sheet. As such, Valbruna asserts, it is part of the company's working capital, which is used to finance the company's current assets (including accounts receivables).

The petitioners disagree. According to the petitioners, it is irrelevant that Valbruna reclassified a portion of its long-term debts as a current liability; the interest rate on that portion remains the rate paid on the company's long-term obligations. According to the petitioners, it is not appropriate to include long-term debts in the formula used to calculate the weighted-average short-term interest rate, because the interest paid on these debts does not properly measure a company's short-term interest experience. Consequently, the petitioners maintain that the Department should continue to exclude the current portion of Valbruna's long-term debt from the calculation of its short-term interest rate.

DOC Position

We agree with the petitioners. The imputed credit calculation measures the opportunity cost associated with carrying accounts receivables. Because accounts receivables are short-term in nature, it is appropriate to base the interest rate used in the credit calculation only on rates paid on short-term loans.

We note that long-term debt generally is incurred to finance large-scale projects (*e.g.,* acquisition of machinery, capital improvements, etc.). Because it is not incurred to manage the day-to-day cash flow of a company, it would be inappropriate to include the interest paid on this type of debt in the credit calculation. The fact that some portion of the long-term debt becomes a current liability each year is irrelevant to this reasoning. Accordingly, we have continued to exclude long-term debt from the calculation of the home market interest rate for purposes of the final determination.

Comment 20: Inventory Carrying Costs as a Direct Selling Expense.

Valbruna claimed the inventory carrying costs at certain of its service centers as a direct selling expense. According to the petitioners, the Department should continue to treat these expenses as indirect, because Valbruna could not substantiate its claim for direct treatment at verification. Specifically, the petitioners argue that Valbruna could not demonstrate that it maintained a customer-specific inventory during the POI, nor could it show that the merchandise initially tagged for shipment to particular customers was not sold to different companies after it left the factory.

Valbruna contends that the expenses in question are analogous to pre-sale warehousing expenses. According to Valbruna, the URAA establishes that home market movement expenses, including pre-sale freight and warehousing expenses, are to be deducted from normal value in all cases, without being subject to a ''direct/indirect'' test similar to selling expenses.

Nonetheless, Valbruna argues that the facts cited by the petitioners are inconsequential. According to Valbruna, the fact that its inventory records are not company-specific does not prove that it incurred no pre-sale warehousing expenses. Moreover, Valbruna asserts that it shipped merchandise tagged for particular customers to other clients only under emergency situations.

DOC Position

We agree with the petitioners. The expenses in question are not actual pre-sale warehousing expenses, such as rent on the warehouse or salaries of the warehousing personnel. Rather, they are the imputed costs associated with maintaining an inventory at the warehouse. As such, they form part of Valbruna's selling expenses, not its warehousing expenses.

Valbruna was unable to substantiate the facts on which it based its assertion that these costs were directly related to the sales of SSWR reported in its home market sales listing. Notably, we found that the data which formed the basis for Valbruna's claim reflected the company's inventory levels more than eight months after the end of the POI. Therefore, we have made no adjustment for these expenses for purposes of the final determination.

Comment 21: Home Market Freight Costs.

In its questionnaire response, Valbruna calculated freight expenses at one of its service centers using an 11-month period, rather than the full 12-month POI. Valbruna contends that the Department should accept this calculation, rather than recalculate Valbruna's freight costs using 12 months, because the volume of shipments in the twelfth month was insignificant. Valbruna asserts that such a recalculation would be inappropriate because it would result in a mis-matching of expenses over time.

According to the petitioners, the Department should allocate Valbruna's freight costs over the entire POI. The petitioners note that not only did Valbruna make shipments throughout the POI, but also many of the expenses (*e.g.*, depreciation and insurance) were incurred regardless of whether the company's trucks were idle.

DOC Position

We agree with the petitioners. At verification, we noted that Valbruna both shipped SSWR to its customers and incurred freight expenses throughout the POI. Accordingly, we have used a freight factor applicable to the 12-month POI for purposes of the final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of SSWR from Italy—except those produced and sold for export to the United States by Valbruna, for whom the final antidumping rate is *de minimis*—that are entered, or withdrawn from warehouse, for consumption, on or after March 5, 1998, the date of publication of our preliminary determination in the **Federal Register**. Article VI.5 of the General Agreement on Tariffs and Trade (GATT 1994) provides that ''[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.'' This provision is implemented by section 772(c)(1)(C) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributed to export subsidies, there is no reason to require a cash deposit or bond for that amount. The Department has determined, in its *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, that the product under investigation benefitted from export subsidies. Normally, where the product under investigation is also subject to a concurrent countervailing duty (CVD) investigation, we instruct the Customs Service to require a cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as shown below, minus the amount determined to constitute an export subsidy. (*See Antidumping Order and Amendment of Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia*, 57 FR 46150 (Oct. 7, 1992).) For CAS, we are subtracting for cash deposit purposes, the cash deposit rate attributable to the export subsidies found in the CVD investigation for that company (*i.e.*, 0.01 percent). The ''All Others'' deposit rate is also based on subtracting the rate attributable to the export subsidies found in the CVD investigation for CAS.

These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage	Bonding percentage
Acciaierie Valbruna/Acciaierie di Bolzano SpA	1.27	N/A
Cogne Acciai Speciali S.r.l	12.73	12.72
All Others	12.73	12.72

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded all zero and *de minimis* weighted-average dumping margins from the calculation of the ''All Others'' rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: July 20, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–20018 Filed 7–28–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–824]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany

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

EFFECTIVE DATE: July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Everett Kelly, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–4194.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department'') regulations are to the regulations at 19 CFR Part 351 (62 FR 27296, May 19, 1997).

Final Determination

We determine that stainless steel wire rod (''SSWR'') from Germany is being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

On February 25, 1998, we issued our preliminary determination in this investigation (63 FR 10847, March 5, 1998) (''*Notice of Preliminary Determination*'').

On March 10, 1998, at the request of Krupp Edestahlprofile GmbH and Krupp Hoesch Steel Products Inc. (collectively ''Krupp''), producers/exporters of the subject merchandise, the Department postponed the final determination to 135 days after the publication of the Department's preliminary determination (*see Notice of Postponement of Final Antidumping Determination* (63 FR 13082, March 17, 1998)).

We received no case briefs or other written comments from interested parties in this investigation.

Scope of Investigation

For purposes of this investigation, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter. Two stainless steel grades, SF20T and K-M35FL, are excluded from the scope of the investigation. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon	0.05 max.
Manganese	2.00 max.
Phosphorous	0.05 max.
Sulfur	0.15 max.
Silicon	1.00 max.
Chromium	19.00/21.00.
Molybdenum	1.50/2.50.
Lead added	(0.10/0.30).
Tellurium added	(0.03 min).

K–M35FL

Carbon	0.015 max.
Silicon	0.70/1.00.
Manganese	0.40 max.
Phosphorous	0.04 max.
Sulfur	0.03 max.
Nickel	0.30 max.
Chromium	12.50/14.00.
Lead	0.10/0.30.
Aluminum	0.20/0.35.

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is July 1, 1996 through June 30, 1997.

Facts Available

In its preliminary determination, the Department found that both Krupp and BGH Edelstahl Freital GmbH (''BGH Edelstahl'') failed to cooperate to the best of their ability in this investigation, as they refused to respond to the Department's antidumping questionnaire (see *Notice of Preliminary Determination*). Accordingly, the Department based the antidumping margin for these companies on facts otherwise available and assigned them the highest margin from the petition (as adjusted by the Department), 21.28 percent. In making its preliminary determination, the Department corroborated the information contained in the petition within the meaning of section 776(c) of the Act, to the extent possible, and found the information to have probative value. Since the preliminary determination, no party (including Krupp and BGH Edelstahl) has presented to the Department any information to challenge the appropriateness of using the information contained in the petition as facts available in determining the dumping margin for Krupp and BGH Edelstahl. Accordingly, for the final determination, we continue to assign Krupp and BGH Edelstahl the highest margin from the petition (as adjusted by the Department), 21.28 percent.

The All-Others Rate

As discussed in the *Notice of Preliminary Determination,* we based the all-others rate on a simple average of the margins in the petition (as adjusted by the Department), 19.45 percent. Section 735(c)(5) of the Act provides that where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776, the Department ''. . . may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.'' This provision contemplates that we weight average the facts-available margins to establish the all-others rate. Where the data is not available to weight average the facts available rates, the Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316, (''SAA''), at 873, provides that we may use other reasonable methods. Inasmuch as we do not have the data necessary to weight average the respondents' facts available margins, we are continuing to base the all-others rate on a simple average of the margins in the petition (as adjusted by the Department), 19.45 percent.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of stainless steel wire rod from Germany, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after March 5, 1998, the date of publication of our preliminary determination in the **Federal Register**. For these entries, the Customs Service will require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below. This suspension of liquidation will remain in effect until further notice.

MFR/Producer/Exporter	Margin percentage
Krupp Edelstahlprofile GmbH, Krupp Hoesch Steel Products	21.28
BGH Edelstahl Freital GmbH	21.28
All-Others	19.45

The all-others rate applies to all entries of subject merchandise except for the entries of merchandise produced by the exporters/manufacturers listed above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury, to the industry within 45 days of its receipt of this notification.

If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 777(i) of the Act.

Dated: July 20, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–20019 Filed 7–28–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–588–843)

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan

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

EFFECTIVE DATE: July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or John Maloney, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–2613 or (202) 482–1503, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Final Determination

We determine that stainless steel wire rod (SSWR) from Japan is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Continuation of Suspension of Liquidation'' section of this notice, below.

Case History

Since the preliminary determination in this investigation on February 25, 1998 (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod from Japan*, 63 FR 10854 (March 5, 1998) (Preliminary Determination)), the following events have occurred:

In February 1998, we issued supplemental requests for information to the three participating respondents in this case: Daido Steel Co., Ltd. (Daido); Nippon Steel Corp. (Nippon); and Hitachi Metals, Ltd. (Hitachi) (collectively, the respondents). We received responses in February and March 1998.

In March 1998, we received revised cost data from Nippon reflecting cost breakouts for ultra-fine (UF) rod, and we received revised sales and cost information from Daido. In addition, on March 18, 1998, we issued an amended preliminary determination in this investigation (*see Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan*, 63 FR 14066 (March 24, 1998)).

In March and April 1998, we verified the questionnaire responses of the respondents. In May and June 1998, the respondents submitted revised sales databases, reflecting verification revisions, at the Department's request.

On June 1, 1998, the petitioners (*i.e.*, AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., and the United Steel Workers of America, AFL–CIO/CLC), and Nippon and Hitachi submitted case briefs. On June 8, 1998, the petitioners and the respondents submitted rebuttal briefs. The Department held a public hearing on June 10, 1998.

Scope of Investigation

For purposes of this investigation, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K–M35FL, are excluded from the scope of the investigation. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon	0.05 max.
Manganese	2.00 max.
Phosphorous	0.05 max.
Sulfur	0.15 max.
Silicon	1.00 max.
Chromium	19.00/21.00.
Molybdenum	1.50/2.50.
Lead	added (0.10/0.30.
Tellurium	added (0.03 min).

K–M35FL

Carbon	0.015 max.
Silicon	0.70/1.00.
Manganese	0.40 max.
Phosphorous	0.04 max.
Sulfur	0.03 max.
Nickel	0.30 max.
Chromium	12.50/14.00.
Lead	0.10/0.30.
Aluminum	0.20/0.35.

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1996, through June 30, 1997.

Facts Available

In the preliminary determination, the Department found that Sanyo Special Steel Co., Ltd. (Sanyo) and Sumitomo Electric Industries Ltd. (SEI) failed to respond fully to our questionnaire. Accordingly, for the preliminary determination, the Department based the antidumping margins for these companies on facts otherwise available and assigned them Daido's margin of 31.38 percent, which was the higher of either the highest margin in the petition or the highest margin calculated for a respondent. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod From Japan*, 63 FR 10854, 10855 (March 5, 1998). Neither company submitted comments on the Department's preliminary determination to use facts available. Accordingly, for the final determination, the Department has continued to base the antidumping margins for these companies on facts otherwise available and assigned them Daido's margin of 34.21 percent, which was the higher of either the highest margin in the petition or the highest margin calculated for a respondent.

Fair Value Comparisons

To determine whether sales of SSWR from Japan to the United States were made at less than fair value, we compared the Export Price (EP) or Constructed Export Price (CEP) to the Normal Value (NV). Our calculations followed the methodologies described in the preliminary determination.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value (presently normal value) when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Investigation'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

In instances where a respondent has reported a non-AISI grade (or an internal grade code) for a product that falls within a single AISI category, we have used the actual AISI grade rather than the non-AISI grades reported by the respondents for purposes of our analysis. However, in instances where the chemical content ranges of reported non-AISI (or internal grade code) grades are outside the parameters of an AISI grade, we have used, for analysis purposes, the grade code reported by the respondents. For further discussion of this issue, see *Comment 1* in the ''Interested Party Comments'' section of this notice, below.

Level of Trade

In the preliminary determination, we conducted a level of trade analysis for Daido, Hitachi, and Nippon. We determined that a level of trade adjustment was not warranted for any of the respondents. *See* Memorandum to the File from the Team regarding the Department's Level of Trade Analysis, dated February 25, 1998. None of the respondents commented on the Department's level of trade determination. In the process of raising arguments on another issue, the petitioners claimed that it may be necessary to reevaluate the level of trade analysis. We have determined that this is not necessary. *See* Comment 5 in the ''Interested Party Comments'' section of this notice, below. Accordingly, for purposes of the final determination, we have continued to hold that a level of trade adjustment is not warranted for any of the respondents.

Export Price/Constructed Export Price

For Daido and Nippon, we used EP methodology, 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 CEP methodology was not otherwise indicated.

For Hitachi, because sales to the first unaffiliated purchaser took place after importation into the United States, we used CEP methodology, in accordance with section 772(b) of the Act.

We calculated EP and CEP based on the same methodology used in the preliminary determination.

Normal Value

We used the same methodology to calculate NV as that described in the preliminary determination, with the following exception:

Nippon

We included bank charges incurred on U.S. sales to cash letters of credit in the circumstance of sale adjustment along with credit and warranty expenses.

Cost of Production

We calculated the cost of production (COP) based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative (SG&A) expenses and packing costs, in accordance with section 773(b)(3) of the Act. We relied on the submitted COPs except in the following specific instances where the submitted costs were not appropriately quantified or valued:

A. Daido

For the final determination, we have included an allocated portion of bonus payments that Daido distributed from its retained earnings to its board of directors and auditors, and excluded a portion of the directors salaries which were allocated to Daido's subsidiaries in the G&A expense variable used in the calculation of COP and CV. *See* Comments 8 and 9 in the ''Interested Party Comments'' section of this notice, below. In addition, we (1) recalculated Daido's fixed overhead costs, used in the calculation of COP and CV, to account for plant common variances; and (2) revised Daido's reported cost of manufacture to include certain costs that had been erroneously excluded from this variable. *See* Memorandum from Taija Slaughter to Chris Marsh, dated July 20, 1998.

B. Hitachi

For the final determination, we have adjusted Hitachi's further manufacturing cost database to reflect one weighted-average cost for each product. *See* Comment 16 in the ''Interested Party Comments'' section of this notice, below.

C. Nippon

Pursuant to our findings at verification, we have revised Nippon's G&A expenses to include certain non-operating income and expenses. *See* Memorandum from Peter Scholl to Chris Marsh, dated July 20, 1998. In addition, we have revised the costs of several products to include certain costs associated with the production of UF SSWR which, for the preliminary determination, had been allocated across all products. *See* Comment 17 in the ''Interested Party Comments'' section of this notice, below.

We also conducted our sales below cost test in the same manner as that described in our preliminary determination. As with the preliminary determination, we found that, for certain models of SSWR, more than 20 percent of the respondent's home market sales were at prices less than the COP within an extended period of time. *See* Section 773(b)(1)(A) of the Act. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A expenses, profit, and U.S. packing costs. We relied on the submitted CVs, except in the following specific instances noted in the ''Cost of Production'' section above.

Currency Conversion

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank in accordance with section 773A of the Act.

Interested Party Comments

General Issues

Comment 1: Use of AISI Grade Designations for Product Matching.

According to the petitioners, Daido and Nippon should not be allowed to rely on internal grade designations for product matching purposes. The petitioners claim that Daido and Nippon designated special internal product codes for certain high-priced home market sales of products that would, except for the addition of small amounts of chemicals not typically found in standard AISI designations, otherwise fit within a standard AISI grade designation. In Nippon's case, the petitioners assert that two specific Nippon internal grades should have been classified within certain AISI grades. The petitioners argue that the Department should assign each of Daido and Nippon's internal grades a standard AISI grade for matching purposes.

Daido states that it only reported internal product codes where the chemical compositions of those internal products were inconsistent with standard AISI grade specifications. Nippon asserts that it reported the AISI grade, rather than its internal grade, whenever the chemical composition of the product at issue met the AISI requirements. Daido and Nippon argue that the Department should continue to rely on internal grade designations, as verified by the Department, for matching purposes.

DOC Position

We agree with Daido and Nippon. We examined their grade classifications at verification and established that the companies appropriately classified each of their internal SSWR grades into the corresponding AISI category, where appropriate. *See* the Department's May 13, 1998, Sales Verification Report for Daido at page 7 and the Department's April 28, 1998, Sales Verification Report for Nippon at page 4. We also confirmed that, per the Department's instructions, Daido and Nippon reported their internal SSWR grade, in lieu of a standard AISI classification, only when the composition of the internal SSWR grade was inconsistent with AISI specifications. Regarding the petitioners' claim that two specific Nippon internal grades should have been reported within standard AISI grades, a review of the information on the record indicates that Nippon properly classified those products within the appropriate grade designations. Accordingly, we have continued to accept Daido and Nippon's internal grade designations for purposes of the final determination.

Comment 2: Selling Expenses Incurred on behalf of End-Users.

According to the petitioners, selling expenses incurred by Daido or Nippon ''on behalf of'' end-users for sales made through unaffiliated trading companies (*i.e.*, downstream expenses) should be treated as indirect selling expenses. The petitioners assert that the selling expenses claimed by Daido and Nippon to be direct selling expenses did not directly relate to the transactions with the unaffiliated trading companies. In support of this argument, the petitioners cite *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54052, 54054 (October 17, 1997) (*Antifriction Bearings*).

Daido and Nippon argue that such expenses are directly related to their sales to unaffiliated trading companies and, thus, should be treated as direct selling expenses. Daido and Nippon assert that the Department's verifications confirmed that expenses such as freight and warehousing, as well as any adjustments to the sales price, are directly related to the particular sales transaction involved. Daido and Nippon cite several cases purporting to establish that Department practice considers such expenses to be direct selling expenses if they are directly related to a particular sale.

DOCPosition

We agree with Daido and Nippon. The information on the record and the documents examined at verification confirmed that the downstream selling expenses and adjustments at issue are directly related to the transactions with the unaffiliated trading companies. *See* Daido's October 27, 1997, section A response at page A–13, and the Department's May 13, 1998, Sales Verification Report for Daido at pages 6–7; Nippon's October 24, 1997, section A response at pages A–15 and A–29 and in Exhibit 20, and the Department's April 28, 1998, Sales Verification Report for Nippon at pages 5–6. Therefore, in accordance with the Department's practice, these expenses are appropriately categorized as direct selling expenses. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan,* 58 FR 37154, 37172–73 (July 9, 1993)(*Carbon Steel Flat Products from Japan*); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order,* 58 FR 39729, 39750 (July 26, 1993). Moreover, we note that the case cited by the petitioners, *Antifriction Bearings,* supports this determination. Specifically, in that case, the Department stated that downstream expenses would be treated as direct expenses when a respondent could directly tie those expenses to a particular sale. In this case, Daido and Nippon have documented that the expenses at issue are directly tied to a specific sale. *See* the Department's May 13, 1998, Sales Verification Report for Daido at pages 6–7 and the Department's April 28, 1998, Sales Verification Report for Nippon at pages 5–6. Accordingly, we have continued to treat these downstream expenses as direct expenses for purposes of the final determination.

Company-Specific Issues

Daido Steel Co., Ltd.

Comment 3: Collapsing of Daido's Reported Further Processing Codes.

According to the petitioners, Daido reported more further processing codes for purposes of product matching than it kept in the ordinary course of business for cost purposes. The petitioners argue that several of Daido's further processing codes fit within the same standard cost code. As a result, the petitioners assert that the Department should collapse Daido's further processing codes based on the further processing groupings maintained by Daido for cost purposes in the normal course of trade.

Daido argues that the different further processing codes it reported reflect different physical characteristics and that it provided details on those differences, as requested by the Department's questionnaire. Daido notes that the petitioners do not take issue with the fact that Daido's different further processing codes reflect different physical characteristics, only that several different further processing codes are included in the same standard cost code. Daido argues that the detail with which it reported its different further processing codes allows the Department to appropriately match U.S. products with home market products that have undergone the exact same further processing. Accordingly, Daido urges the Department to continue to distinguish between the different further processing codes reported by Daido in conducting product matching for purposes of the final determination.

DOC Position

We agree with Daido. The Department's questionnaire instructed Daido to report any and all further processing. While the Department designated specific processes (*i.e.,* ''hot-rolled,'' ''hot-rolled and annealed,'' and ''hot-rolled, annealed, and pickled''), it also requested that Daido report all other further processing methods. In response, Daido reported various further processing methods which it claims impart distinct physical characteristics on the wire rod. *See* Daido's November 17, 1997, sections B and C response at Exhibit B–3. The petitioners do not argue that the different further processing methods fail to impart distinct physical characteristics on the wire rod, only that they are included in the same standard cost code and, therefore, should be grouped in the same further processing code. However, this methodology is inconsistent with the Department's practice, which is to rely on physical characteristics, rather than cost groupings, for model matching purposes. *See, e.g., Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Antidumping Duty Administrative Review,* 63 FR 18879, 18881 (April 16, 1998) (*Carbon Steel 1*). Accordingly, we used the further processing codes reported by Daido for purposes of the final determination.

Comment 4: Product Code Designation of Daido's Proprietary Wire Rod.

According to the petitioners, the cost information submitted by Daido on its proprietary wire rod was untimely and should be rejected. The petitioners argue that, in breaking out the cost for its proprietary wire rod, Daido significantly reduced its reported costs of production for all other products. The petitioners assert that these changes affected all of Daido's cost data and were submitted after the preliminary determination, thus denying the petitioners the ability to comment on that new cost information in a meaningful way. The petitioners urge the Department to reject the data as untimely and rely on facts available.

If the Department accepts Daido's data as timely, the petitioners argue that the information should be rejected as an effort by Daido to create an unauthorized matching criterion. The petitioners state that Daido submitted this proprietary wire rod information to the Department using a product code that included a new further processing designation. The petitioners assert that the process used to make the proprietary wire rod involved unique steps taken to manufacture the billet, the raw material used to make wire rod, not any further processing of wire rod. The petitioners argue that processes used to manufacture the billet were not included as part of the matching criteria in this investigation and cannot appropriately be characterized as further processing. Thus, the petitioners contend that this proprietary wire rod should not be given a unique product code for matching purposes, because processes used to manufacture the billet were not established as a matching criterion.

Daido argues that it first submitted information on the record highlighting its proprietary wire rod in January 1998, and that several subsequent Daido submissions referenced the unique characteristics of this product. According to Daido, those submissions provided the petitioners ample opportunity to respond to the new information. In addition, Daido asserts that there was no reallocation of costs from all of its other products to its proprietary wire rod product. Instead, Daido claims that, in breaking out costs for its proprietary wire rod, it only removed costs from the control number in which that product was previously included.

Daido further asserts that it did not attempt to create an unauthorized matching criterion. According to Daido, the Department's questionnaire expressly allows a respondent to add additional product characteristics to those requested by the Department, and that the Department has permitted this practice in other cases. *See, e.g., Final Results of Antidumping Administrative Review of Solid Urea From the Former German Democratic Republic*, 62 FR 61271, 61275–76 (November 17, 1997) (*Solid Urea*).

Daido also argues that its proprietary wire rod has different product characteristics than the other products initially included within the same control number. According to Daido, the substantial difference is evidenced by the significant disparity in cost between the proprietary wire rod and the other products within its former control number. Daido asserts that treating its proprietary wire rod in the same control number as the other products would distort the dumping analysis, and that such a result is inconsistent with the Department's practice. *See, e.g., Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle From Japan*, 62 FR 60472, 60474–75 (November 10, 1997) (*Roller Chain*) and *Solid Urea.*

Finally, Daido argues that the Department could not compare any of Daido's U.S. sales with its home market sales of the proprietary wire rod because of the large difference-in-merchandise (DIFMER) adjustments that would be required. According to Daido, the resulting DIFMER adjustment from any such comparison would exceed the twenty percent limit established by the Department's policy and precedent. Thus, Daido asserts that its proprietary wire rod should not be used in determining NV. Daido claims that the Department's precedent establishes that differences in merchandise can warrant the use of special product control numbers for model matching purposes. To support this position, Daido relies on *Carbon Steel 1* at 18881, and *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 60 FR 44009, 44011 (August 24, 1995) (*Carbon Steel 2*).

DOC Position

We agree with the petitioners. Daido's information on its proprietary wire rod represented an attempt by Daido to distinguish that product's characteristics from its other home market products for matching purposes. The Department's questionnaire of September 19, 1997, indeed allowed for supplemental product characteristics, in addition to those specified by the Department (*i.e.*, grade, diameter, further processing, and coating). However, the Department emphasized that ''if you add characteristics not specified in the questionnaire, describe in the narrative response why you believe that the Department should use this information to define identical and similar merchandise.'' *See* the Department's September 19, 1997, Questionnaire at page B–6. Daido, however, never made a case for the addition of a product characteristic not specified in the questionnaire. Rather, Daido uniquely classified its proprietary wire rod by adding a further processing code, a product characteristic established by the Department, to the list of further processing codes that it had previously submitted to the Department. However, the distinguishing feature of Daido's proprietary wire rod appears to be its expensive processing of the billet, the raw material used to make wire rod, rather than further processing of the finished wire rod. Further processing of wire rod can be defined as manufacturing processes conducted on the wire rod after it is produced. Thus, the addition of a unique ''further processing'' code by Daido to distinguish its proprietary wire rod from its other products, based on an expensive processing of the billet *before* it is hot-rolled into wire rod, was not appropriate. Moreover, Daido's reliance on *Solid Urea* to support its claim that the Department's practice is to allow for additional matching criteria submitted by respondents is inappropriate. In *Solid Urea,* the Department continued to accept the use of an additional model match criterion submitted to the Department by the respondent prior to the preliminary results of that review. *See Solid Urea* at 61275–76. However, since Daido has not submitted an additional matching criterion to the Department in this investigation, *Solid Urea* does not address the issue raised in this investigation.

The Department does not find that including Daido's proprietary wire rod within its former control number will distort the dumping analysis. Daido's proprietary wire rod and the other products within its former control number have the same product characteristics, as specified by the Department for matching purposes. Furthermore, Daido's reliance on *Roller Chain* is misplaced. In *Roller Chain,* for the preliminary determination, the Department deviated from its prior practice of using ten criteria to match products and, instead, used only three matching criteria. For the final determination, the Department decided that it should return to the practice from previous reviews of using ten matching criteria because of an overriding concern that employing fewer matching criteria might result in grouping physically diverse products as identical or similar merchandise. In this investigation, however, Daido has not proposed additional matching criteria for the Department's model match, nor has it argued that the Department has improperly limited the number of matching criteria. Instead, Daido has attempted to indirectly create a new matching criterion by adding a new ''further processing'' code to a specific product that has no unique further processing, as established by the Department's description of its product matching characteristics.

Moreover, Daido's argument that any comparison between its U.S. sales and its proprietary wire rod would exceed the Department's DIFMER adjustment limit relies on Daido's proprietary wire rod being classified as a separate product with a unique control number. However, the Department has determined, given the matching criteria in the questionnaire, that it would not be appropriate to designate Daido's proprietary wire rod with a unique control number, nor to separate its costs from the other products in its original control number.

Finally, we do not agree with the petitioners that Daido's information on its proprietary wire rod was untimely. Daido first provided information on its proprietary wire rod in its January 14, 1998, supplemental questionnaire response, two months prior to the commencement of verification and, as such, was not untimely. *See* section 351.301(b)(1) of the Department's regulations.

For discussion of a similar issue, see *Comment 17*, below.

Comment 5: Daido's Adjustment Claims for Warehousing and Freight Expenses.

The petitioners assert that, although the Department verified Daido's reported channels of distribution and related selling functions information, which included information on whether warehousing services were provided by

Daido in each of its channels of distribution, the warehousing expenses reported by Daido were inconsistent with Daido's description of the services provided for sales in each of its home market channels of distribution, as verified by the Department. Specifically, the petitioners claim that Daido's modified explanation that shipment route, as opposed to channel of distribution, determined whether warehousing expenses were, in fact, incurred raises serious questions about the reliability of Daido's reported warehousing expense information. The petitioners assert that we should disregard Daido's modified explanations, or, in the alternative, if such information is accepted, we should revisit our level of trade analysis that depended on Daido's channels of distribution information. The petitioners argue that, if the Department disregards Daido's modified explanation of its warehousing expenses, it should not accept any reported inland freight or warehousing expenses for the five distribution channels in which Daido indicated that sales were not distributed through warehouses.

In addition, the petitioners allege that Daido failed to report warehouse shipment dates in cases where warehousing expenses were reported. According to the petitioners, in many cases this situation occurred for channels of distribution in which Daido reported its sales as not being shipped through warehouses. The petitioners argue that the Department should not accept any warehousing expenses in such cases, because the failure to report a shipment date from the warehouse indicates that no warehousing expense was incurred by Daido.

The petitioners also assert that, according to the verification findings, the Department should disallow any reported warehousing expenses whenever Daido reported the same dates for shipment to the warehouse and shipment from the warehouse to the end-user. According to the petitioners, since Daido overstated its expenses in such cases (*see* the Department's May 13, 1998, Sales Verification Report for Daido at pages 3–4), the Department should disallow these expenses in its final margin analysis.

Finally, the petitioners assert that Daido reported inland freight expenses both for shipment to a warehouse (INLFTWH) and for shipment from a warehouse to the customer (INLFTCH) in cases where the merchandise was apparently not warehoused. The petitioners argue that Daido's explanation that field INLFTWH represented either the cost of shipment to the warehouse or to the customer directly was not consistent with its reported expense information, and resulted in the double reporting of freight expenses. As a result, the petitioners assert that the Department should disallow any expense in field INLFTWH for sales where Daido reported no warehousing expenses.

Daido responds that the Department's Sales Verification Report explained the relationship between its channels of distribution and shipment route information, and its reported warehousing expenses. *See* the Department's May 13, 1998, Sales Verification Report for Daido at page 2. Daido asserts that the warehousing expense information reflected in its discussion of channels of distribution was the standard situation for transactions within each of the channels of distribution. However, Daido argues that exceptions existed because of the circumstances of individual sales transactions. As a result, Daido explains that the reported shipment route ultimately determined whether warehousing expenses were incurred on a sale-specific basis, regardless of the standard established for the applicable channel of distribution.

Regarding the petitioners' concern about Daido's lack of reported warehouse shipment dates in cases where Daido reported a warehousing expense, Daido answers that its submissions established that it was unable to provide a warehouse shipment date for sales by Daido to unaffiliated trading companies, despite the fact that such shipments were made through a warehouse. Thus, Daido argues that the lack of a warehouse shipment date in such instances does not determine that no warehousing expenses were incurred.

Responding to the petitioners' concerns about Daido's reported warehousing expenses when the two shipment dates (*i.e.*, the date of shipment to the warehouse and the date of shipment from the warehouse to the customer) were the same, Daido argues that it has adopted a conservative approach, even more conservative than the petitioners' recommendation, by reporting no warehousing expense when the difference between the two shipment dates was less than or equal to two days.

Finally, Daido asserts that the petitioners' concern about the alleged double reporting of inland freight expenses was, in fact, the result of Daido's sales to unaffiliated trading companies. In such cases, Daido explains that it did not have information on the shipment dates from the warehouse, which led the petitioners to believe that no warehousing occurred. However, Daido claims that expenses were reported in both freight data fields (*i.e.*, INLFTWH and INLFTCH) only when the merchandise was shipped through a warehouse.

DOC Position

We disagree with the petitioners. At verification, the Department confirmed that Daido's reported shipment route determined whether Daido, in fact, incurred warehousing expenses on a transactions-specific basis. To that end, we examined relevant freight and warehousing documents at verification. *See* the Department's May 13, 1998, Sales Verification Report for Daido at page 3. Relying on such documents, we confirmed that Daido incurred warehousing expenses (even when the explanation for the reported channel of distribution did not indicate warehousing) for sales where the reported shipment route reflected shipment through a warehouse. In addition, at verification, we found no cases where Daido reported warehousing expenses when the corresponding shipment route indicated that shipment was not made through a warehouse. Accordingly, the Department accepted Daido's reported warehousing and inland freight (to the warehouse) expenses for transactions where the reported shipment route indicated warehousing of the merchandise, even when the reported standard distribution channel did not indicate warehousing services.

Contrary to the petitioners' contention, the documents examined by the Department at verification did not raise questions about the reliability of Daido's reported warehousing expense information. Rather, they consistently showed that the reported shipment route was the sale-specific key to whether warehousing, in fact, occurred. The channels of distribution information submitted by Daido explained the standard warehousing and freight services provided for each channel of distribution, despite the fact that the shipment route determined whether warehousing, in fact, occurred for specific sales transactions. *See* the Department's May 13, 1998, Sales Verification Report for Daido at page 16. The Department's verifiers found that, as a general rule, the explanations of freight and warehousing services provided for each channel of distribution were accurate and reliable. Therefore, the Department did not disregard the channels of distribution information reported by Daido, nor did it disregard Daido's modified explanation that the reported shipment route is determinative as to whether warehousing occurred. Thus, since Daido's channels of distribution information was verified by the Department, the Department has not reevaluated its level of trade analysis for purposes of the final determination.

In addition, the Department did not reject Daido's reported warehousing expenses in cases where no shipment date from the warehouse was reported. Daido explained, and the Department found, that Daido did not have the information on the shipment date from the warehouse in every case in which a shipment was, in fact, made through a warehouse, particularly in cases where sales were made to unaffiliated trading companies. *See* Daido's November 17, 1997, Sections B and C response, at page B–19. Thus, the Department accepted Daido's reported warehousing expenses for sales to unaffiliated trading companies when the warehouse shipment date was blank, provided that the shipment route reported for the specific transaction indicated shipment through a warehouse as explained above.

Furthermore, our examination of Daido's revised sales information submitted on May 29, 1998, revealed that Daido reported no warehousing expenses (neither storage nor handling) when the difference between the shipment date to the warehouse and the shipment date from the warehouse to the customer was less than or equal to two days. This is a conservative methodology because Daido explained that in such cases it still incurred some handling charges even where no storage expenses were paid as a result of the short turnaround at the warehouse. Thus, the Department accepted Daido's reported warehousing expense information in such cases.

Moreover, the Department did not disregard Daido's reported inland freight expenses, both to the warehouse and from the warehouse to the customer, in cases where the merchandise was actually warehoused, as indicated by Daido's reported shipment route information. The petitioners' concern that Daido had double reported its freight expenses hinged on its belief that no warehousing occurred in cases where Daido reported no date in the data field SHIPDT2H (shipment from the warehouse). However, as explained above, Daido did not have the information on shipment date from the warehouse (SHIPDT2H) in every case where merchandise was actually shipped through a warehouse. Thus, provided the reported shipment route indicated shipment through a warehouse, the Department did not disregard the reported freight expenses for shipment to a warehouse and from that warehouse to the customer.

Finally, the Department confirmed at verification that data field INLFTWH (shipment to a warehouse or end-user) represented the expense to deliver merchandise to the customer in cases where no warehousing occurred. *See* the Department's May 13, 1998, Sales Verification Report for Daido at page 13. Therefore, the Department did not disallow expenses in field INLFTWH because no warehousing expense was reported by Daido.

In conclusion, although the freight and warehousing information reported by Daido was intricate and required further clarification at verification, our findings at verification indicate that Daido's information was reliable. *See* the Department's May 13, 1998, Sales Verification Report for Daido at pages 13–17. As a result, the Department did not disregard the freight and warehousing information reported by Daido in its May 29, 1998, submission. The Department used that information, as verified by the Department and as explained above, for purposes of the final determination.

Comment 6: Corrections Arising from Verification.

According to the petitioners, the Department should correct Daido's reported COP/CV data based on the corrections made by Daido at the outset of verification.

DOC Position

We agree. We have made the appropriate corrections for purposes of the final determination.

Comment 7: Major Inputs.

The petitioners argue that the Department should adjust the prices paid by Daido for certain materials to affiliated trading companies to reflect the market price. The petitioners assert that, consistent with the Department's practice, purchase prices for identical inputs paid by a producer to affiliated suppliers are compared first to prices paid to unaffiliated suppliers. If the price paid to an affiliated supplier is not an arm's-length transaction, the Department will adjust the price based on the arm's-length prices paid to the unaffiliated supplier.

Daido argues that the Department generally prefers the use of the transfer price for inputs purchased from affiliated parties for the calculation of COP and CV, provided that the transaction occurred at an arm's-length price. According to Daido, input prices paid to its affiliated trading company were generally comparable to prices paid to its unaffiliated trading companies and, thus, should be acceptable for the calculation of COP and CV.

DOC Position

To the extent practicable, the Department generally will use the transfer price of inputs purchased from affiliated suppliers in calculating COP and CV, provided that the transactions at issue occurred at arm's-length prices. *See, e.g., Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review,* 62 FR 17148, 17161 (April 9, 1997). At verification, we examined the input prices Daido's affiliated trading company paid its unaffiliated suppliers for certain inputs sold to Daido. We noted that, on average, the transfer price between Daido and its affiliated trading company exceeded the price paid by the affiliated trading company to non-affiliated suppliers. *See* Daido's March 26, 1998, supplemental section D questionnaire response at Exhibit SD–11. In addition, we noted at verification that the transfer price paid by Daido to its affiliated trading company exceeded the affiliated trading company's fully loaded cost of production (*i.e.,* cost of manufacturing plus general expenses). *See* the Department's May 20, 1998, Cost Verification Report for Daido at Exhibits 13 and 14. Therefore, in the final margin analysis we relied on the transfer prices paid by Daido to its affiliated trading company for the inputs at issue.

Comment 8: G&A Expense Rate.

The petitioners assert that, as in the preliminary determination, the Department should continue to use Daido's unconsolidated cost of sales to calculate the G&A expense rate. According to the petitioners, Daido's reliance on consolidated cost of sales is inappropriate because its consolidated financial statements include information for Daido's affiliated companies that are not involved in the production and sale of the subject merchandise.

Daido contends that the functions performed at the head office benefit all of its subsidiaries; thus, it is appropriate to use consolidated cost of sales as the denominator for calculating the G&A expense rate.

DOC Position

We disagree with Daido. It's the Department's normal practice to calculate the G&A expense rate based on the respondent company's unconsolidated operations plus a portion of G&A expenses incurred by affiliated companies on behalf of the respondent. *See Carbon Steel Flat Products from Japan,* 58 FR 37154 (July 9, 1993). At verification, the only specific example Daido could provide in support of its contention that it incurred G&A costs on behalf of its subsidiaries related to salaries paid to its directors. Thus, for the final determination, we allocated a portion of the directors salaries to Daido's consolidated subsidiaries. However, in computing Daido's G&A expense rate, we have continued to use Daido's unconsolidated cost of sales as the denominator.

Comment 9: Bonus adjustment.

The petitioners argue that the Department should include bonuses paid by Daido to its board of directors and auditors in its G&A expenses. Referencing *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan,* 63 FR 8909, 8922 (February 23, 1998) (SRAMs from Taiwan), the petitioners assert that bonuses paid by Daido to its board of directors and auditors represents compensation to these individuals for the services they rendered to the company and, accordingly, the expenses should be included in the calculation of Daido's G&A expense rate.

Daido contends that its G&A expense rate calculation is consistent with its audited income statement, which records bonuses paid to directors and auditors on its statement of retained earnings. Because this adjustment is consistent with Daido's books and records in the normal course of business, the Department should not recalculate the G&A expense rate. Further, Daido argues that if the Department does intend to include bonuses in the G&A expense rate calculation, it should allocate the amount over Daido's consolidated cost of sales as the amounts benefit all of its consolidated companies.

DOC Position

In accordance with section 773(f)(1)(A) of the Act, we rely on the respondent's normal books and records, provided that they comply with the foreign country's Generally Accepted Accounting Principles (GAAP) and reasonably reflect the company's costs of producing the subject merchandise. In this instance, we agree with the petitioners that the bonuses paid to Daido's board of directors and auditors, which Daido distributed through its retained earnings, represent compensation for services provided to the company. Therefore, we believe that it is appropriate to include these amounts in the calculation of COP and CV because they reasonably reflect the company's cost of producing the subject merchandise, pursuant to section 773(f)(1)(A) of the Act. Moreover, including this type of bonus payment in COP and CV is consistent with our treatment of this type of retained earnings bonus distribution. *See, SRAMs from Taiwan* at 8921. In that proceeding, we determined that the amounts distributed by the respondents represented compensation for services which the individuals had provided the companies. Accordingly, for the final determination, we have included an allocated portion of the bonus payments that Daido distributed from its retained earnings to its board of directors and auditors in the calculation of COP and CV.

Comment 10: Exchange Gains.

The petitioners argue that, consistent with the preliminary determination, the Department should continue to disallow Daido's net exchange gains offset to G&A expenses. According to the petitioners, the Department's practice is not to include exchange gains or losses in the calculation of COP if such gains and losses were related to accounts receivables (*Notice of Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy,* 61 FR 30,326, 30363 (June 14, 1996)). The petitioners claim that, because Daido did not provide a schedule which indicates the types of transactions generating the company's exchange gains and losses, the Department is not able to make a determination of the source which generated the exchange gain or loss. Therefore, the net exchange gains should be disallowed as an offset to Daido's G&A expenses.

Daido did not comment on this issue.

DOC Position

We agree with the petitioners. Daido provided a schedule indicating that the foreign exchange gains relate to its accounts receivables. Because our normal practice is to exclude exchange gains and losses related to accounts receivable, we disallowed these gains as an offset to G&A expenses.

Hitachi Metals, Ltd.

Comment 11: Viability of Home Market.

The petitioners argue that the Department erred in finding that Hitachi's home market was not viable. The petitioners state that the Statement of Administrative Action (SAA) makes it clear that the five percent benchmark for viability may not be appropriate in all instances. *See* SAA at 821. Accordingly, the petitioners argue that the Department should have obtained Hitachi's home market sales information and, based on that information, determined whether the home market was, in fact, viable.

Hitachi argues that the Department properly concluded that its home market was not viable because the quantity of SSWR sold in Japan constituted less than five percent of the quantity sold to the United States. Hitachi argues that the Department fully verified its quantity and value information as accurate and its determination of non-viability is supported by the statute and the regulations. Hitachi notes that the petitioners have not presented any reason why the Department should ignore the verified information contained in the record in this investigation and disregard its normal practice regarding viability.

DOC Position

We agree with Hitachi. The Department will consider a home market ''viable'' if the aggregate quantity of sales of the foreign like product is five percent or more of the aggregate quantity of sales of subject merchandise to unaffiliated buyers in the United States. *See* section 773(a)(1)(B) of the Act and section 351.404(b)(2) of the Department's regulations. In this case, the Department has verified that the quantity of SSWR Hitachi sold in Japan constituted less than five percent of the quantity of SSWR sold to the United States. *See Verification of the Questionnaire Responses of Hitachi Metals, Ltd.,* Memorandum to File from Barbara Wojcik-Betancourt and Sunkyu Kim through James Maeder dated May 6, 1998, at pages 6–8; and *Verification of the Questionnaire Responses of Hitachi Metals America, Ltd.,* Memorandum to File from Barbara Wojcik-Betancourt through James Maeder dated march 30, 1998, at pages 4–6.

Furthermore, the petitioners' argument that the SAA ''makes clear that the five percent benchmark for viability may not be appropriate in all instances'' does not apply to the facts of this case. We note that the SAA states that ''[t]he volume of sales in the home market *normally will be deemed insufficient, i.e.,* the home market will not be considered usable if the quantity of sales by the exporter in the home market is less than five percent. . . .'' SAA at 821 (Emphasis added). The exception to this rule, on which the petitioners mistakenly rely, pertains to ''some unusual situation'' that would render the above application inappropriate. *Id.* In this case, the Department verified that the quantity of

Hitachi's sales of the foreign like product in the home market was below the five percent threshold. *See* the Department's May 6, 1998, Sales Verification Report for Hitachi at pages 6–8. Moreover, the petitioners did not point to any evidence contained in the administrative record which would demonstrate some unusual circumstances that would render the application of the usual five percent test in any way inappropriate. Accordingly, for the final determination, we continue to find that Hitachi's home market is not viable and, therefore, we based the NV on the CV of the subject merchandise.

Comment 12: Errors Concerning Recalculated Further Manufacturing Cost.

Hitachi alleges that the Department made a ministerial error with respect to the recalculated further processing cost. Specifically, Hitachi alleges that the Department included U.S. repacking expenses and the cost of U.S. inland freight in the further manufacturing field subsequently deducted from the U.S. price. Hitachi argues that, because U.S. repacking expenses and U.S. inland freight expenses are deducted elsewhere in the Department's margin calculation, the Department's inclusion of these expenses in the further manufacturing variable results in these expenses being deducted twice from the gross unit price.

DOC Position

We agree with Hitachi and have corrected this error.

Comment 13: Calculation of CEP Selling Expenses.

The petitioners argue that, for purposes of the preliminary determination, the Department failed to include repacking expenses as part of the selling expenses for Hitachi's CEP sales. The petitioners contend that repacking incurred by Hitachi for its U.S. sales is an expense associated with the further manufacture of the merchandise and, as such, is among the expenses deducted from the starting price under section 772(d)(2) and for purposes of the allocation of profit under 772(d)(3). Accordingly, the petitioners argue that, for purposes of the final determination, the Department should include repacking expense in the calculation of CEP selling expenses.

Hitachi asserts that, contrary to the petitioners' claim, repackaging expenses were included in the calculation of Hitachi/HMA's CEP selling expenses as part of the further manufacturing variable and, therefore, no adjustment is necessary.

DOC Position

We agree with the petitioners that repacking expenses should be included in the calculation of CEP selling expenses. Hitachi does not take exception with this argument, arguing instead that repacking expenses are already included in CEP selling expenses as part of the further manufacturing variable that is used in the calculation of CEP selling expenses. However, Hitachi argues in *Comment 12,* and the Department agrees, that repacking expenses should be deducted from the calculation of the further manufacturing variable in order to avoid deducting repacking expenses twice from the U.S. price. Once repacking expense is deducted from the further manufacturing variable, the petitioners' argument that it is not included in the calculation of CEP selling expenses is a valid one. Accordingly, for the final determination, the Department has deducted repacking expense from the calculation of the further manufacturing expenses (as explained in *Comment 12*) and added repacking expense to the calculation of CEP selling expenses.

Comment 14: Scope of the Investigation.

Hitachi requests that the Department exclude grades 440 C SSWR and proprietary grade X from this investigation. Hitachi asserts that grade 440 C SSWR should be excluded from this investigation because Hitachi has not sold it in the United States during the POI or at any other time. Moreover, according to Hitachi, the factors set forth in 19 CFR 351.225(k) clearly establish that grade 440 C SSWR should not be included within the scope of this investigation. Hitachi notes that, pursuant to section 351.225(k)(2), in determining whether merchandise falls within the scope of an order, the Department will consider: (1) the physical characteristics of the product; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed. Hitachi argues that the different production process for grade 440 C SSWR, as compared to standard SSWR, results in a very different product with distinct physical and technical characteristics. Because of these distinct physical and technical characteristics, Hitachi argues that the ultimate expectations of the end-user are different than the expectations for standard SSWR. In addition, Hitachi argues that, because grade 440 C SSWR is captively consumed *(i.e.,* 100 percent consumed by Hitachi's U.S. affiliate), it is distributed only to affiliated companies or consumed by the producer and, thus, is not advertised or displayed. Based on the foregoing, Hitachi contends that the Department should determine that grade 440 C SSWR is outside the scope of the investigation.

Hitachi next asserts that the other grade subject to its exclusion request, proprietary grade X, should be excluded from the scope of the investigation because it allegedly is not, and cannot be, manufactured in the United States. In addition, Hitachi declares that it does not intend to license production of this product to any U.S. company. Hitachi further contends that, because there is no domestic industry that produces grade X, the petition could not have been filed on behalf of the domestic grade X industry within the provisions of the antidumping law.

DOC Position

We disagree with Hitachi. Hitachi's reliance on the factors set forth in 19 CFR 351.222(k)(2) is misplaced. As the regulation indicates, those criteria are used to clarify the scope of an existing order where there is some ambiguity in the scope language, not to determine the scope of an investigation. The scope of an investigation is determined, in general, by the petition. The scope of this investigation, as established in the petition, includes SSWR that is:

> . . . made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, and are normally sold in coiled form, and are of solid cross-section.

See Petition at page I–11. The information submitted on grades 440 C SSWR and grade X establish that these products are hot-rolled SSWR with less than 1.2 percent carbon and more than 10.5 percent chromium, and that these products otherwise meet the manufacturing specifications outlined in the above-referenced scope language. Furthermore, it is evident from the scope language that the only exclusions of SSWR products intended by the petitioners pertained to SSWR grades SF20T and K–M35FL. Hitachi has submitted no information to show that grade X does not meet the specifications contained in the scope language and, in fact, Hitachi concedes that grade 440 C SSWR meets the specifications outlined in the petition. *See* Hitachi's September 15, 1997, submission at page 1. The fact that a specific grade of SSWR is not currently produced in the United States does not constitute grounds for exclusion from the scope of the investigation. Therefore, there is no basis to exclude grades 400 C and X from the scope of this investigation.

Comment 15: CEP Profit Rate for Hitachi.

The petitioners argue that the Department's use of Hitachi Metals America, Ltd.''s (HMA) financial statements and Yasugi Works' internal financial statements to calculate Hitachi's CEP profit for purposes of the preliminary determination resulted in a profit margin that was not representative of the profit earned on sales of the subject merchandise. The petitioners claim that, in accordance with section 772(f) of the Act, CEP profit for the U.S. sales should be based on the ''total actual profit'' which is defined as ''profit earned by the foreign producers . . . with respect to the sales of the same merchandise for which total expenses are determined.'' Further, referencing the SAA at 824, the petitioners maintain that the profit calculation must be based on the ''subject merchandise sold in the United States and the foreign like product sold in the exporting country.'' In order for the Department to comply with these requirements, the petitioners contend that the Department should calculate CEP profit based on the sum of Nippon's and Daido's weighted average profit and the profit earned by Hitachi on its sales of subject merchandise.

Hitachi claims that the Department correctly calculated CEP profit and should rely on the methodology used in the preliminary determination. Hitachi states that sections 772(f)(2)(C) and (f)(2)(D) of the Act, which outlines the methods for calculating CEP profit, provides no guidance or support for the use of other producers' profits when calculating CEP profit. Further, Hitachi contends that the financial statements the Department used to calculate CEP profit contain expenses incurred by the foreign manufacturer and exporter and the affiliated U.S. company to the narrowest category of merchandise sold in all countries, which includes the subject merchandise.

DOC Position

We disagree with the petitioners that the Department should deviate from the methodology used in the preliminary determination and, instead, use Nippon and Daido's profit rates, as well as the CV data, to calculate CEP profit. Section 772 (f)(2)(C) of the Act prescribes three alternative methods for determining total expenses for purposes of calculating CEP profit. The use of any of the methods depends on the data available to the Department. *See* Policy Bulletin No. 97 (Sep. 4, 1997). The first alternative, section 772(f)(2)(C)(i), is not applicable because Hitachi does not have a viable home market and the statute does not require the company to submit cost data for the home market solely for purposes of calculating CEP profit. The Department is precluded from using the second alternative, section 772(f)(2)(C)(ii), to calculate CEP profit because Hitachi does not prepare financial reports that would include only merchandise sold in the United States and the exporting country. By relying on both the Yasugi Works income statement and the HMA income statement, the Department was able to compute CEP profit in accordance with the third alternative under section 772(f)(2)(C)(iii), which relies on sales prices and expenses incurred with respect to the narrowest category of merchandise sold in all countries which includes subject merchandise. *See, e.g., Notice of Final Results of Antidumping Administrative Review: Furfuryl Alcohol From the Republic of South Africa*, 62 FR 61084, 61090 (Nov. 14, 1997); *Preliminary Results of Administrative Review: Roller Chain, Other than Bicycles from Japan*, 62 FR 25165, 25170 (May 8, 1997). Accordingly, for the final determination, we have continued to rely on Yasugi Works' and HMA's income statements when calculating CEP profit.

Comment 16: Weight Averaging of Further Manufacturing Costs.

The petitioners argue that, with regard to Hitachi's further manufacturing costs, a single weighted average cost should be calculated for each product. The petitioners point out that Hitachi reported specific further manufacturing costs for each sale made in the United States. According to the petitioners, consistent with the Department's established practice, COP and CV should be reported as a single weighted average cost for each product.

Hitachi contends that it appropriately reported its further manufacturing costs. However, it does not object to the Department's weight averaging of Hitachi's further manufacturing costs by product code.

DOC Position

We agree with the petitioners. Our practice is to calculate a single weighted-average cost using production quantity as the weighting factor for each product sold in the United States, as described in the Department's section E questionnaire. *See* the Department's Questionnaire at page E–2; *see* also, *Notice of Final Determination of Sales at Less Than Fair Value; Open-End Spun Rayon Singles Yarn From Australia*, 62 FR 43701, 43703 (Aug. 15, 1997). Accordingly, for the final determination, we have adjusted Hitachi's further manufacturing costs to calculate one weighted-average cost for each product.

Nippon Steel Corp.

Comment 17: Ultra Fine Rod.

In its questionnaire response, Nippon reported home market sales of a particular type of SSWR which it terms ultra fine (UF) SSWR. The Department used these sales in our analysis for purposes of the preliminary determination. Nippon argues that, for the final determination, the Department should exclude UF SSWR from the scope of this investigation, claiming now that it is a unique product produced by a manufacturing process distinct from that of other types of SSWR. According to Nippon, the manufacture of UF SSWR includes expensive processes (*i.e.*, electron beam remelting and secondary forging) not required for the production of other types of SSWR within this investigation. Nippon asserts that these additional processes occur after the billet is conditioned. In addition, Nippon points out that the manufacturing costs for UF SSWR are significantly higher than its other SSWR products. Therefore, Nippon contends that UF SSWR is not subject merchandise.

Nippon further asserts that the definition of subject merchandise in the petition and the Department's preliminary determination excludes UF SSWR. Nippon states that subject merchandise has been defined as SSWR that is ''. . . manufactured *only* by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling. . . .'' *See* Preliminary Determination, 63 FR 10854, 10856 (March 5, 1998) (emphasis added by Nippon). According to Nippon, UF SSWR is not manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, but is, in fact, manufactured by numerous processes beyond those listed in the Department's initiation notice (*see Initiation of Antidumping Investigations: Stainless Steel Wire Rod From Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan*, 62 FR 45224 (August 26, 1997)) and preliminary determination. Therefore, Nippon asserts that UF SSWR is not within the scope and, thus, should be excluded from this investigation.

Additionally, Nippon contends that the Department's regulatory criteria for determining whether a product constitutes the subject merchandise support excluding UF SSWR from this investigation. Nippon states that, although this regulatory provision applies to post-order scope inquiries, the criteria within the regulatory provision are instructive to the Department's analysis and show that UF SSWR is different from standard rod because its physical characteristics, purchasers' expectations, ultimate use, channels of trade, and manner of advertisement and display apply only to UF SSWR. Accordingly, Nippon urges the Department to find that UF SSWR is outside the scope of this investigation.

Alternatively, if the Department finds that UF SSWR is subject merchandise, Nippon argues that UF SSWR cannot be used in any product matches if the Department accepts the unique further processing codes for UF SSWR that were reported by Nippon. Nippon urges the Department to accept the unique further processing codes Nippon assigned UF SSWR in its databases because of the differences in the production process between UF SSWR and standard SSWR and because the Department's questionnaire asked Nippon to report ''any and all further processing'' without limiting ''further processing'' to post-production or finishing operations. Nippon argues that accepting its distinct further processing codes will, in turn, result in the Department assigning separate product control numbers to UF SSWR. According to Nippon, this will result in removing UF SSWR from all product matches because no products with the distinct UF SSWR product control numbers were sold in the U.S. market and the Department's matching operation should show that UF SSWR cannot be most similar to any imported SSWR product. To support its argument that UF SSWR is a unique product and, thus, should be assigned its own product control number, Nippon cites *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Antidumping Duty Administrative Review,* 63 FR 18879, 18881 (April 16, 1998), where the Department allowed for the use of separate product control numbers, where there were differences in the chemical compositions of the products in question, if such differences were important to the respondent and its customers. In addition, Nippon asserts that the Department considers whether product differences are purposeful and commercially significant in determining whether an assigned product control number is warranted. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Antidumping Administrative Review,* 60 FR 44009, 44011 (August 24, 1995).

Finally, Nippon argues that UF SSWR cannot be used for any match with standard SSWR because the resulting DIFMER adjustment would exceed that allowed by the Department. *See* 19 CFR 351.411. According to Nippon, any comparison between UF SSWR and standard SSWR sold in the United States would exceed the DIFMER adjustment limit because of the cost differences that result from the differences in the physical characteristics of UF and standard SSWR. Accordingly, Nippon urges the Department to exclude home market sales of UF SSWR from the final antidumping margin calculations.

The petitioners assert that UF SSWR is within the scope of this investigation because, as established by the petition and by the Department, it is a stainless steel product that is produced from a billet and is hot-rolled. In response to Nippon's contention that UF SSWR is outside the scope because it is subject to special processing in addition to being hot-rolled, the petitioners argue that the significance of the phrase ''hot-rolled only'' in the scope language is to distinguish SSWR from products that are subject to a cold-drawing or cold-finishing process after the billet is produced. The petitioners argue that they never intended to exclude products based on any particular production steps taken when producing the billet. Therefore, the petitioners assert that UF SSWR is within the scope because it is stainless steel that is made into a billet and is eventually hot-rolled into wire rod, regardless of the type or types of billet processing.

If the Department accepts Nippon's data on UF SSWR, the petitioners argue that the Department should reject Nippon's efforts to create a new matching criterion in this investigation. According to the petitioners, Nippon characterizes a process used in the production of the billet, the raw material used to manufacture wire rod, as ''further processing'' of hot-rolled wire rod. The petitioners contend that the processes used to refine the billet were not included as part of the matching criteria in this investigation and that billet processing is not a ''further processing'' step performed on wire rod. The petitioners assert that ''further processing,'' included as part of the matching criteria in this investigation, was intended to cover finishing steps (*i.e.,* annealing or pickling) conducted after the wire rod had been hot-rolled. Therefore, according to the petitioners, since billet processing is conducted before the wire rod is hot-rolled and is not a finishing step, the Department should deny Nippon's submission of unique further processing codes and separate costs to distinguish UF SSWR.

DOC Position

We disagree with Nippon that UF SSWR is not within the scope of the investigation. As discussed in response to *Comment 14,* when the Department considers whether a product is within the scope of an investigation, the analysis focuses on the language of the scope contained in the petition. The purpose of this analysis is to determine the petitioner's intent with respect to the scope coverage. *Minebea Co., Ltd.* v. *United States,* 782 F. Supp. 117, 120 (CIT 1992) (the Department uses its ''broad discretion to define and clarify the scope of an antidumping investigation in a manner which reflects the intent of the petition''). If the scope language in the petition is ambiguous, the Department examines additional evidence. *Torrington Co.* v. *United States,* 786 F. Supp. 1021, 1026 (CIT 1992). In this case, the petitioners proposed a definition of the scope of the investigation that included wire rod products that are defined within the industry as:

> hot-rolled or hot-rolled annealed and pickled or descaled rounds, squares, octagons, hexagons and shapes, in coils, for subsequent cold-drawing or cold-rolling. Since stainless steel wire rod is only manufactured by hot-rolling and is primarily sold in coiled form, Petitioners believe that only HTS heading 7221 is applicable to stainless steel wire rod. In addition, while stainless steel bar is manufactured by both hot-rolling and cold-rolling processes, it is always produced in straight lengths.

See Petition at page I–7 (quotation and footnotes omitted). The above-referenced language was adopted by the Department in the scope definition contained in the preliminary determination:

> For purposes of this investigation, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

See Preliminary Determination at 10,856.

As the petitioners have stated on the record, their use of the phrase ''only by hot rolling'' is meant to distinguish stainless steel bar, a product that is manufactured both by hot-rolling and cold-rolling processes, from SSWR, described as only manufactured by hot rolling. Thus, the petitioners did not intend to exclude any SSWR product in which the billet used to produce the product undergoes additional processes prior to being hot rolled. The only express exclusions of SSWR products contained in the petitions pertained to SSWR grades SF20T and K-M35FL. Thus, contrary to Nippon's assertion, because UF SSWR is stainless steel that is hot-rolled, annealed, pickled and super finished, or hot-rolled, pickled and super-finished, and otherwise meets the specifications in the scope language, it is within the scope of the investigation.

We also disagree with Nippon that the special processing of the billet used in the production of UF SSWR should be considered a separate, distinct, further processing operation. Contrary to Nippon's assertion, the phrase ''further processing,'' as used by the Department in its questionnaire, was not meant to include processing of the billet prior to hot-rolling but, rather, was limited to the hot-rolling process and subsequent finishing operations. The Department's questionnaire, under the description of further processing, states the following:

Report any and all further processing.
Show ''1'' for hot-rolled
Show ''2'' for hot-rolled, annealed
Show ''3'' for hot-rolled, annealed and pickled
Show ''4'' for other method (indicate method)

See the Department's September 19, 1998, antidumping questionnaire at page C–7. In its response, Nippon reported eight different further processing codes, all beginning with the hot-rolling process and including one or more additional finishing processes (*i.e.*, annealed and/or picked, and/or super finished), which indicates that Nippon understood the information requested by the Department. *See* Nippon's December 15, 1998, Sections B and C questionnaire response at Appendix 26. This conclusion is supported by the fact that Nippon briefly described the UF SSWR production process in its Section A questionnaire response, but did not then include these additional processes in its response to the request for information on further processing. *See* Nippon's December 15, 1998, Section A questionnaire response at page A–38 (''One kind of NSC's stainless steel wire rod, Ultra Fiber (''UF''), undergoes a remelting or reheating process. By remelting twice, non-metallic inclusion is reduced to the minimum, which enables the UF to be drawn to extremely small diameters.''). It was only after the preliminary determination that Nippon presented the argument that the processing operations specific to UF SSWR should be included in the further processing codes.

For the final determination, the Department has continued to limit ''further processing'' operations to the hot-rolling and subsequent finishing processes performed on the rod itself.

With regard to Nippon's argument that the Department's practice justifies assigning separate control numbers to UF SSWR and non-UF SSWR, for the sole reason that UF SSWR undergoes additional processing resulting in differences in chemical composition, we note that, from the outset of this investigation, the Department has consistently held that it would consider four criteria when designating control numbers: grade, diameter, further processing, and coating. As in past investigations involving steel products, we selected ''grade'' as a matching criterion, in place of actual chemical content, because we determined that grade sufficiently defines the chemical content of the merchandise. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from France,* 58 FR 68865 (Dec. 29, 1993). In fact, Nippon supported this decision and argued strongly against the petitioners' request that the respondents report the actual chemical content of each production heat. *See* Nippon's October 21, 1997, submission. The information on the record, and verified by the Department, indicates that the chemical content of Nippon's UF SSWR falls within the ranges of established standard AISI steel grades. The fact that the billet used to produce UF SSWR undergoes certain production processes that allegedly impart to it some particular properties is irrelevant. The process does not alter the steel chemically to the extent that it results in a unique grade of steel: it continues to fall within standard AISI grade designations. Thus, for purposes of the final determination, we continued to use the four matching criteria, including grade, as outlined in our questionnaire, when assigning control numbers to both UF and non-UF SSWR.

We disagree with the petitioners, however, that we should reject Nippon's cost allocation methodology (*i.e.*, that we should continue to allocate UF SSWR costs over all products). It is the Department's longstanding practice to use a single-weighted average cost for all products falling within a particular control number. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value; Open-End Spun Rayon Singles Yarn From Australia,* 62 FR 43701, 43703 (Aug. 15, 1997). Specifically, the Department's questionnaire directed Nippon to report ''a single weighted-average cost for each unique product as represented by a specific control number.'' *See* the Department's September 19, 1997, Questionnaire at page D–1. For the preliminary determination, Nippon failed to allocate the cost of UF SSWR to the specific control number that included UF SSWR. Following the preliminary determination, Nippon submitted revised sales and cost data which assigned UF SSWR separate control numbers depending on what Nippon defined as the further processing of the billet. This revised cost data was subsequently verified by the Department. In light of our determination that UF SSWR should not be assigned a separate control number, and in accordance with our practice of allocating costs on a control number-specific basis, for the final determination, we have calculated a single-weighted average cost for all products (UF SSWR and non-UF SSWR) falling within a specific control number.

Comment 18: Timeliness of Nippon's UF SSWR Submissions.

The petitioners contend that Nippon's submitted information on its UF SSWR should be rejected by the Department as untimely. According to the petitioners, Nippon first claimed that its UF SSWR sales were outside the scope of this investigation in its March 4, 1998, supplemental questionnaire response. The petitioners assert that Nippon did not submit special product code designations for UF SSWR in the March 4, 1998, submission. The petitioners contend that Nippon did not submit revised cost data to reflect the unique status of UF SSWR until March 23, 1998. According to the petitioners, Nippon did not revise its further processing codes to reflect UF SSWR until its March 25, 1998, clerical errors submission. Finally, the petitioners point out that Nippon submitted corrections to its March 23, 1998, revised cost data submission on May 29, 1998. The petitioners argue that Nippon's submissions, subsequent to the preliminary determination, violate the Department's regulations (*see* 19 CFR section 353.301(b)(1)) and have denied the petitioners an opportunity to adequately comment on the new data. Accordingly, the petitioners urge the

Department to reject Nippon's data as untimely and, instead, rely on facts available.

Nippon argues that it is permitted to submit information at any time in response to the Department's request. *See* 19 CFR 351.301(c)(2). Nippon states that it initially provided information on its UF SSWR on March 4, 1998, in response to the Department's February 25, 1998, supplemental questionnaire, which included a request for information on appropriate model matches. Nippon asserts that its cost data for UF SSWR sales was provided to the Department on March 23, 1998, and was referenced in its March 4, 1998, submission. Nippon further argues that its subsequent submissions relating to UF SSWR (*i.e.*, the March 25, 1998, and May 28, 1998, submissions referenced by the petitioners) were merely corrections to clerical errors. Thus, according to Nippon, its information on UF SSWR was not untimely under the Department's regulations, providing the petitioners an opportunity to comment on this issue since March 1998.

DOC Position

We agree with Nippon that its information placed on the record regarding UF SSWR was requested by the Department pursuant to 19 CFR 351.301(c)(2) and was not untimely filed. In its February 25, 1998, supplemental questionnaire, the Department requested certain new information on the method for model matching, which included a due date of March 4, 1998. In responding to that supplemental questionnaire on March 4, 1998, and providing the requested data, Nippon included a request that its UF SSWR product be excluded from the investigation, based on its analysis of the new information the Department requested. Because Nippon's exclusion request was tied to the new information it submitted at the request of the Department, we find that the submission was received by the due date and, thus, was not untimely filed. See 19 CFR 351.301(c)(2). Subsequently, Nippon submitted cost data and revised further processing codes to support its March 4, 1998, contention that UF SSWR is outside the scope of this investigation. Because this information was filed in response to the Department's request, we did not reject it as untimely for purposes of the final determination.

Comment 19: Appropriate Matching Hierarchy for Further Processing Codes.

Nippon argues that, in the preliminary determination, the Department failed to take into account the similarity of different types of further processing conducted on SSWR when determining the most similar match for U.S. sales of SSWR. Nippon contends that the Department selected the further processing code numerically closest to that of the U.S. product as the most similar type of further processing code, rather than the further processing code most similar in terms of the actual process that is performed on the product. Nippon states that, as a consequence of the methodology used, the Department's preliminary determination program rejected, as matches, products with further processing more similar to the U.S. product than those used in the margin calculation.

The petitioners argue that the Department properly matched further processing codes for purposes of its preliminary determination and should continue to use the same methodology in its final determination. The petitioners contend that, if Nippon believed the Department should change its methodology, Nippon should have submitted detailed cost data supporting its argument (*i.e.*, showing that the cost of annealed products is not substantially greater than the cost of products that were not annealed). The petitioners argue that, because Nippon failed to do so, the Department's model match methodology properly compared U.S. products that have been annealed to home market products that have been both annealed and super finished. The petitioners state that the annealing process is a critical and costly finishing operation that significantly alters the merchandise; in contrast, the super finishing operation is not typically as important as annealing. Thus, according to the petitioners, products that are annealed and super-finished are more similar to products that have been annealed than are products that have not been annealed. The petitioners thus contend that the Department's matching hierarchy for further processing was not simply based on selecting the closest numerical code; rather, it properly selected the next most similar product and, therefore, should not be changed.

DOC Position

We agree with the petitioners. Nippon has provided no support for its claim that the Department rejected, as matches, products with further processing operations more similar to the U.S. product than those used in the margin calculation. For example, Nippon states that a home market product that has been hot-rolled and pickled is a more appropriate match to a U.S. product that has been hot-rolled, annealed, and pickled than a home market product that has been hot-rolled, annealed, pickled and super finished. However, Nippon does not explain why hot-rolled and pickled is, in fact, a more similar further processing match to hot-rolled, annealed and pickled than the Department's selection of hot-rolled, annealed, pickled and super-finished. Without a justification for a change in the methodology, the Department is unable to make a determination as to the merits of Nippon's argument. While Nippon has not provided an argument as to why one methodology is more appropriate than another, the petitioners have argued that the annealing process is a critical and costly finishing operation that significantly alters the merchandise, while the super-finishing operation is not typically as important a finishing operation as annealing. Accordingly, for the final determination, the Department has not altered its model matching methodology.

Comment 20: Denomination of U.S. Sales Prices and the Proper Borrowing Rate to Calculate U.S. Credit Expense.

The petitioners argue that Nippon should have reported its U.S. sales to Japanese trading companies in yen, not dollars, because Nippon conducted its transactions with these customers exclusively in yen. Given that Nippon did not follow the Department's original instructions to report the prices in the currency in which the payment was made, the petitioners argue that the Department should reject Nippon's data. At a minimum, the petitioners urge the Department to make a downward adjustment to Nippon's U.S. prices based on facts available.

The petitioners also assert that, given that Nippon chose to report its prices in U.S. dollars, it should not be permitted to benefit from this misreporting by using a yen-based interest rate. Rather, the petitioners argue that the Department should use the dollar-based interest rate to calculate Nippon's U.S. credit expense.

Nippon argues that, because it reported its net sales prices (*i.e.*, gross unit price minus trading company discount) in yen, as well as the gross price and trading company discount in U.S. dollars, the petitioners' claim that Nippon did not report sales data in yen is inaccurate. Accordingly, Nippon argues that, even if the Department decides to use U.S. sales data in yen, the Department should use the reported sales price, and not apply facts available. Further, if the Department uses U.S. sales data in yen, Nippon asserts that the petitioners' recommended methodology of using the yen-based U.S. price and then converting it back into U.S. dollars would require two currency exchanges using two different exchange rates. Nippon explains that the Department uses the Federal Reserve daily exchange rates, adjusted for fluctuations on the date of the U.S. sale, and that Nippon uses forward exchange rate contracts set a number of days after the shipment date. Accordingly, Nippon asserts that the Department would need to incorporate both of these exchange rates into any conversion of yen-based U.S. price back into U.S. dollars. Nippon observes that this process would be distortive because of the differences in exchange rates. Accordingly, the Department should continue to use the dollar-based U.S. price because it does not require a currency conversion that would distort the U.S. price. Nippon concludes that, regardless of the Department's determination, the Department should use the reported sales price in U.S. dollars for sales made by Nittetsu Shoji because Nittetsu Shoji's sales to its U.S. customers were transacted and billed in U.S. dollars.

Nippon also argues that, while the amount reported on the invoice was denominated in U.S. dollars, the amount it charged to the unaffiliated trading company (i.e., the gross price less a standard discount) was denominated in yen and, therefore, the Department should use Nippon's yen-based borrowing rate when calculating its U.S. credit expense, in accordance with its established practice. *See Final determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria,* 60 FR 33551, 33555 (June 28, 1995) and Policy Bulletin No. 98.2 (February 23, 1998).

DOC Position

We agree with Nippon. In the questionnaire sent to Nippon, the Department instructed Nippon to report the gross unit price recorded on the invoice. In this case, the gross unit price recorded on the invoice is recorded in U.S. dollars. Also recorded on the invoice is the percent discount applicable to the sale and the net price in yen charged to the unaffiliated Japanese trading company. There is no gross price in yen reported on the invoice. Rather, Nippon took the dollar amount, subtracted a 2.5 percent trading company discount, and then multiplied this amount by an exchange rate provided in the invoice. Accordingly, since Nippon reported its sales in accordance with the Department's instructions (*i.e.*, it reported the gross unit price recorded on the invoice), we have continued to use the information provided by Nippon in the final determination.

Additionally, Nippon provided a separate field in which it reported the net unit price charged to the trading company, which it defined as the gross price less the standard trading company discount converted to yen using the exchange rate reflected on the invoice. We confirmed at verification that Nippon received the yen-denominated amount from the trading company. Therefore, in accordance with the Department's practice, as outlined in Policy Bulletin No. 98.2 (February 23, 1998), for the final determination, we used Nippon's yen-based borrowing rate when calculating U.S. credit expenses. However, because sales by Nittetsu Shoji to unaffiliated customers in the United States were denominated in U.S. dollars, for the final determination, we continued to use the dollar-based interest rate when calculating U.S. credit expense for Nittetsu Shoji's U.S. sales.

Comment 21: Time Period for Calculating Credit Expense.

Nippon points out that, in the preliminary determination, in calculating credit expense for Nittetsu Shoji, the Department used, as the date of payment, the maximum number of days that Nittetsu Shoji waited to exchange the letter of credit for such sales for cash, rather than the average number of days. Nippon notes that the Department did not use the average number of days reported by Nittetsu Shoji because this number was unsubstantiated in the questionnaire responses. Nippon now argues that, because actual payment dates were not readily accessible in its accounting system, it followed the Department's instructions and reported the average age of accounts receivables. Nippon asserts that, at verification, the Department verified Nittetsu Shoji's use of the average number of days in its reporting and calculations. Nippon also notes that the Department specifically reviewed the payment dates and found no discrepancies in Nittetsu Shoji's calculation of the short-term interest rates. Accordingly, for purposes of the final determination, Nippon urges the Department to use the average number of days, rather than the maximum number of days that a letter of credit was outstanding, when calculating Nittetsu Shoji's U.S. credit expense.

The petitioners counter that, while the Department found no discrepancies in the interest rates, the Department did not verify the accuracy of the payment periods reported by Nittetsu Shoji. In fact, the petitioners argue that the Department found at verification that, for at least one U.S. sale, Nittetsu Shoji had not reported the payment dates accurately (*i.e.*, Nittetsu Shoji understated the actual payment period). Accordingly, given that Nippon failed to demonstrate at verification that the payment periods were accurate, the petitioners urge the Department to reject the payment periods reported by Nippon and, instead, rely on the longest payment period reported for Nippon's U.S. sales as facts available.

DOC Position

We agree with Nippon. The payment period reported by Nittetsu Shoji is an average payment period. As an ''average,'' this payment period may be longer for some sales, as in the example cited by the petitioners, while it may be shorter for other sales. Our questionnaire permits the use of an average payment period where a respondent asserts, and the Department verifies, that the actual payment dates are not readily accessible in the respondent's accounting system. *See* Questionnaire at page C–23. Moreover, at verification, while the Department verified the payment dates of individual sales, it did not verify the average number of days used in the credit calculation. Because the range of payment dates analyzed at verification is comparable with the range of payment dates reported by Nittetsu Shoji, we have determined that, for the final determination, it is appropriate to use the average number of payment days reported by Nittetsu Shoji when calculating credit expense.

Comment 22: Home Market Credit Expenses.

The petitioners argue that Nippon's Verification Report at page 6 indicates that the payment terms reported by both Nippon and Nittetsu Shoji do not properly reflect the actual credit expenses incurred. Specifically, the petitioners note that the Department found at verification that, for one of the home market sales traces, Nittetsu Shoji received advance payment and, as a result, paid the customer interest on that payment amount until the originally agreed upon payment due date. The petitioners argue that credit expenses must be reported based on the expenses actually incurred, not on Nippon's estimation of what its credit expenses were. The petitioners contend that, assuming that Nittetsu Shoji or Nippon actually paid their customers interest on prepayments, Nippon should have reported the actual payment dates and the amount of interest paid for all sales. The petitioners state that, because Nippon failed to provide the information requested by the Department, and did not demonstrate at verification that the information contained in its questionnaire response was correct, the Department should reject Nippon's home market credit expense adjustment.

Nippon counters that, because its reporting and calculation of home market imputed credit expense was consistent with the Department's instructions, and was subsequently verified, it should be used in the final determination. First, Nippon argues that it would be unreasonable for the Department to reject all of Nippon's credit expenses when the alleged error related only to sales by Nittetsu Shoji, not Nippon. Second, the petitioners' complaint that Nippon did not report actual credit expenses should be disregarded because imputed expenses by their nature are not actual expenses. Nippon explains that the imputed credit expense requested from a respondent and used by the Department in its margin calculations represents the theoretical opportunity cost to the respondent for extending credit to its customers until the payment date and, as such, is not an actual amount. In addition, Nippon states that the sales trace noted by the petitioners represents an anomalous payment of interest by Nittetsu Shoji to a customer who paid the invoice before the due date. As such, while imputed credit expense is the theoretical cost to Nittetsu Shoji of lending money to its customer through extended payment terms, the sale noted by the petitioners involves the opposite, a loan by the customer to Nittetsu Shoji with the payment by Nittetsu Shoji to the customer representing a payment of interest on the short-term loan. Therefore, Nippon contends that Nittetsu Shoji's payment of interest to this one customer should have no bearing on Nippon's imputed credit expense adjustment.

Third, Nippon notes that, because the interest amount Nittetsu Shoji paid to the customer on the prepayment was greater than the average short-term interest rate used by Nittetsu Shoji to calculate imputed credit expense, Nittetsu Shoji's methodology did not result in a benefit to Nittetsu Shoji, but rather was a conservative methodology for calculating imputed credit expense which followed the Department's standard practice.

Finally, Nippon argues that its reporting of home market imputed credit expense was consistent with the Department's instructions. Citing the Department's verification report for Nittetsu Shoji, Nippon notes that the Department found no significant discrepancies or inconsistencies with the questionnaire responses. Accordingly, Nippon contends that the petitioners' argument that Nittetsu Shoji failed to demonstrate at verification that the information contained in its questionnaire response was correct is in direct conflict with the Department's verification report.

DOC Position

As noted by Nippon, imputed credit expenses represent the opportunity cost to the respondent of extending credit to its customers until the payment due date. As such, they are not actual expenses incurred and recorded by a respondent. *See, e.g., Certain Fresh Cut Flowers from Colombia: Final Results of Antidumping Duty Administrative Review*, 63 FR 31724, 31727 (June 10, 1998). We use such opportunity costs when there is no actual credit expense recorded on the books of the respondent. When a customer pays a respondent for merchandise after shipment of the merchandise, the opportunity cost to that respondent is the number of days between shipment and payment times the respondent's short-term borrowing rate applied to the gross unit price less any discounts. *See* Policy Bulletin No. 98.2 (Feb. 23, 1998). However, when a customer prepays for the merchandise, and then is paid interest on that prepayment, the actual cost to a respondent for offering extended payment terms is the amount of interest paid to the customer between the date of payment and the agreed upon payment due date and there is no need to calculate an opportunity cost. Accordingly, this is the amount that should have been reported to the Department, along with the date the customer paid for the merchandise and the agreed upon payment due date. The methodology employed by Nittetsu Shoji in calculating imputed credit expenses for the particular sale in question did not accurately reflect its costs of extending credit to this customer.

However, we note that this was the only verified instance in which Nittetsu Shoji received prepayment and then paid interest to the customer. *See* the Department's May 5, 1998, Sales Verification Report for Nittetsu Shoji at pages 5–6. Moreover, we did not note any instances in which Nippon received prepayment and then paid interest. Therefore, we disagree with the petitioners that Nippon and Nittetsu failed to demonstrate at verification that the information contained in Nippon's questionnaire response was correct and that, therefore, the Department should reject the home market credit expense claimed by Nippon and Nittetsu Shoji. Moreover, Nippon stated that this prepayment to Nittetsu Shoji was anomalous (*i.e.,* not in accordance with its usual practice), demonstrating that it would have been beneficial to Nittetsu Shoji to report the interest it had paid in lieu of the imputed credit expense it incurred.

Accordingly, for the final determination, we have continued to use the credit information provided by Nippon and Nittetsu Shoji.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of SSWR from Japan—except for merchandise produced and sold by Hitachi Metals Ltd., which received a zero margin—that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Daido Steel Co. Ltd.	34.21
Nippon Steel Corporation	21.18
Hitachi Metals Ltd.	0.00
Sanyo Special Steel Co., Ltd.	34.21
Sumitomo Electric Industries, Ltd.	34.21
All Others	25.26

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act, from the calculation of the ''All Others Rate.''

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, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 777(i) of the Act.

Dated: July 20, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–20020 Filed 7–28–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–806]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Sweden

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

EFFECTIVE DATE: July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Everett 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.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Final Determination

We determine that stainless steel wire rod (''SSWR'') from Sweden is being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination (*i.e., Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire from Sweden*, 63 FR 10841 (March 5, 1998)), the following events have occurred:

In February 1998, we requested additional information from Fagersta Stainless AB (''Fagersta'') concerning grade specifications and corresponding matching control numbers. In March 1998, we received responses to these questionnaires, as well as supplemental responses to Sections D and E of the Department's antidumping questionnaire. Also, Fagersta submitted revised sales and cost databases.

From March to May 1998, we conducted verification of Fagersta's responses to the antidumping questionnaire. In May 1998, we issued our verification reports for Fagersta, Fagersta's home market affiliates AB Sandvik Steel (''Sandvik'') and Avesta Welding, and Fagersta's U.S. affiliates Sandvik Steel Company (''SSUS''), Avesta Sheffield Inc. (''ASI''), Amstek Metal (''Amstek'') and the Kanthal Corporation.

Also in May 1998, AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., and United Steelworkers of America (''the petitioners'') withdrew their request for a hearing. The petitioners and Fagersta submitted case briefs on June 2, 1998, and rebuttal briefs on June 9, 1998. On June 12 and 15, 1998, we held separate meetings with Fagersta and the petitioners, respectively, concerning the level of trade issue raised in their case briefs and rebuttal briefs.

On June 23, 1998, Fagersta requested that certain alloy metal wire rod and wire for electric resistance heating material and heating elements be excluded from the scope of the investigation. On July 6, 1998, the petitioners stated that they agreed that the scope of this investigation should exclude the products in question. On July 8, 10 and 14, Fagersta provided detailed scope descriptions and clarifications for the products it requested be excluded from the scope of this investigation (*see* ''Scope of Investigation'' section of this notice for further details).

Scope of Investigation

For purposes of this investigation, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter. Certain stainless steel grades are excluded from the scope of the investigation. SF20T and K-M35FL are excluded. The following proprietary grades of Kanthal AB are also excluded: Kanthal A–1, Kanthal AF, Kanthal A, Kanthal D, Kanthal DT, Alkrothal 14, Alkrothal 720, and Nikrothal 40. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon	0.05 max.
Manganese	2.00 max.
Phosphorous	0.05 max.
Sulfur	0.15 max.
Silicon	1.00 max.
Chromium	19.00/21.00.
Molybdenum	1.50/2.50.
Lead	Added (0.10/0.30).
Tellurium	Added (0.03 min).

K–M35FL

Carbon	0.015 max.
Silicon	0.70/1.00.
Manganese	0.40 max.
Phosphorous	0.04 max.
Sulfur	0.03 max.
Nickel	0.30 max.
Chromium	12.50/14.00.
Lead	0.10/0.30.
Aluminum	0.20/0.35.

KANTHAL A–1

Carbon	0.08 max.
Silicon	0.70 max.
Manganese	0.40 max.
Chromium	20.50 min, 23.50 max.
Aluminum	5.30 min, 6.30 max.
Iron	Balance.

KANTHAL AF

Carbon	0.08 max.
Silicon	0.70 max.

KANTHAL AF—Continued

Manganese	0.40 max.
Chromium	20.50 min, 23.50 max.
Aluminum	4.80 min, 5.80 max.
Iron	Balance.

KANTHAL A

Carbon	0.08 max.
Silicon	0.70 max.
Manganese	0.50 max.
Chromium	20.50 min, 23.50 max.
Aluminum	4.80 min, 5.80 max.
Iron	Balance.

KANTHAL D

Carbon	0.08 max.
Silicon	0.70 max.
Manganese	0.50 max.
Chromium	20.50 min, 23.50 max.
Aluminum	4.30 min, 5.30 max.
Iron	Balance.

KANTHAL DT

Carbon	0.08 max.
Silicon	0.70 max.
Manganese	0.50 max.
Chromium	20.50 min, 23.50 max.
Aluminum	4.60 min, 5.60 max.
Iron	Balance.

ALKROTHAL 14

Carbon	0.08 max.
Silicon	0.70 max.
Manganese	0.50 max.
Chromium	14.00 min, 16.00 max.
Aluminum	3.80 min, 4.80 max.
Iron	Balance.

ALKROTHAL 720

Carbon	0.08 max.
Silicon	0.70 max.
Manganese	0.70 max.
Chromium	12.00 min, 14.00 max.
Aluminum	3.50 min, 4.50 max.
Iron	Balance.

NIKROTHAL 40

Carbon	0.10 max.
Silicon	1.60 min, 2.50 max.
Manganese	1.00 max.
Chromium	18.00 min, 21.00 max.
Nickel	34.00 min, 37.00 max.
Iron	Balance.

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation (''POI'')

The POI is July 1, 1996, through June 30, 1997.

Fair Value Comparisons

To determine whether sales of SSWR from Sweden to the United States were made at less than fair value, we compared the export price (''EP'') or constructed export price (''CEP'') to the Normal Value (''NV''), as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States,* 133 F.3d 897 (Fed. Cir. 1998). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (''CV'') as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Investigation'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire, and information submitted in Fagersta's response to the Department's February 26, 1998, supplemental questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

In instances where Fagersta has reported a non-AISI grade (or an internal grade code) for a product that falls within a single AISI category, we have used the actual AISI grade rather than the non-AISI grade reported by Fagersta for purposes of our analysis. However, in instances where the chemical content ranges of reported non-AISI (or an internal grade code) grades are outside the parameters of an AISI grade, we used the grade code reported by the respondents for analysis purposes (*see* Comment 6). We made changes to our concordance program from the preliminary determination which incorporated corrections submitted to the Department in Fagersta's March 16, 1998, submission with respect to Fagersta's three most similar grade comparisons (*see Calculation Memorandum for the Final Determination for Fagersta Stainless AB* dated July 20, 1998 (''Final Calculation Memorandum'')).

With respect to home market sales of non-prime merchandise made by Fagersta during the POI, we have continued to exclude these sales from our final analysis based on the limited quantity of such sales in the home market and the fact that no such sales were made to the United States during the POI, in accordance with our past practice (*see Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat*

Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Korea, 58 FR 37176, 37180 (July 9, 1993)).

Level of Trade

As discussed in the preliminary determination, Fagersta claimed a level of trade (''LOT'') adjustment on the basis that it offers significantly different services to its affiliated customers in the home market, in comparison to its services to unaffiliated customers in the United States, and charges its affiliated customers higher prices as a result. In our preliminary determination, we determined Fagersta's U.S. sales and home market sales to be at the same LOT and no LOT adjustment under section 773(a)(7)(A) of the Act was consequently warranted.

For the final determination, we have collapsed Fagersta and Sandvik. Therefore, we have not used Fagersta's home market sales to Sandvik in our analysis (*see* Comment 1 for further discussion). With regard to Fagersta's home market sales to Sandvik's wholly-owned affiliate Gusab Stainless AB (''Gusab'') and Fagersta's home market sales to its affiliate Avesta Welding, we have continued to treat these Fagersta home market sales as being at the same LOT as its U.S. sales (*see* Comment 3).

Export Price and Constructed Export Price

As discussed in the preliminary determination of this proceeding, Fagersta reported as EP transactions its sales of subject merchandise sold to unaffiliated U.S. customers prior to importation through two affiliated companies in the United States—ASI and SSUS. Fagersta reported as CEP transactions its sales of subject merchandise sold to SSUS for its own account and sales made by Amstek, the product of which was sourced from SSUS. SSUS and Amstek either resold the subject merchandise to unaffiliated customers or SSUS further manufactured the wire rod into wire products which are outside the scope of this investigation.

During verification, we reviewed the selling activities of Fagersta's U.S. affiliates. In particular, we paid close attention to ASI's and SSUS' inventory records and freight and U.S. customs documentation, as well as correspondence documentation between Fagersta and its U.S. affiliates. Based on our verification findings, we find that EP is appropriate for all of Fagersta's sales to the United States through ASI and for specific Fagersta sales through SSUS reported as EP sales transactions (*see* pages 15 and 17 of the May 11, 1998, Sales Verification Report of Fagersta Stainless AB, page 12 of the May 20, 1998, SSUS Verification Report, and pages 8 and 9 of the May 22, 1998, ASI Verification Report). With respect to the EP sales mentioned above, we find that the customary commercial channel between Fagersta and its unaffiliated customers is for Fagersta to ship the merchandise directly to the unaffiliated U.S. customers without having the merchandise enter into the physical inventory of the U.S. affiliates. We also find that the U.S. affiliates' activities are limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unaffiliated U.S. buyers. Accordingly, for purposes of the final determination, we treated certain SSUS sales and all of ASI's U.S. sales as EP transactions (*see* Comment 4 for a further discussion of SSUS' EP sales).

We calculated EP and CEP, as appropriate, in accordance with sections 772 (a), (b), (c), and (d) of the Act. For those CEP sales that were further manufactured from subject merchandise, we deducted the costs of further manufacturing to determine CEP for such merchandise, in accordance with section 772(d)(2) of the Act. We calculated EP and CEP based on the same methodology used in the preliminary determination, with the following exceptions: (1) we used the March 16, 1998, U.S. and home market sales listings; (2) we adjusted the U.S. inventory carrying costs and indirect selling expenses based on our verification findings in Sweden; and (3) we corrected a ministerial error in our margin program where we had overwritten the sales quantity for the first record of each sale type and control number combination (*see* Comment 10).

In addition, we made the following company-specific adjustments to Fagersta's U.S. affiliates' reported data:

A. Amstek

Based on verification findings, we adjusted the direct selling expenses and warranty expenses pertaining to Amstek's sales data, and we deleted an invoice from Amstek's sales listing (*see* Comments 5 and 8 for further discussion).

B. SSUS

We corrected the reported amounts for discounts, freight, U.S. duty, U.S. brokerage and handling, credit expenses, inventory carrying costs and warranty expenses based on our verification findings (*see* Comment 8 for further discussion). We calculated international freight for SSUS' EP sales transactions based on transaction-specific expense data examined at verification (*see* Comment 9 for further discussion). We corrected for invoice-specific errors with respect to alloy surcharges, sale dates, invoice dates, discounts, duty and brokerage fees, and inland freight warehouse transfer expenses (*see* Final Calculation Memorandum for further discussion).

C. ASI

We corrected ASI's reported direct selling expenses based on our verification findings. We also corrected invoice-specific information in ASI's sales listing with respect to quantities, U.S. brokerage fees, international freight expenses, and inland freight expenses (*see* Final Calculation Memorandum).

Normal Value

After testing (1) home market viability; (2) whether sales to affiliates were at arm's-length prices; and (3) whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price to Price Comparisons'' and ''Price to CV Comparisons'' sections of this notice (*see* ''Affiliated-Party Transactions and Arm's Length Test'' section below and Comment 2 for further discussion).

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

2. Affiliated-Party Transactions and Arm's-Length Test

We have not used Fagersta's home market sales to Sandvik in our analysis, because we find that Fagersta and Sandvik meet the criteria for collapsing affiliated companies (*see* Comment 1 for further discussion). With respect to Fagersta's home market sales to Avesta Sheffield's (''Avesta'') affiliate and Gusab (a wholly-owned affiliate of Sandvik), we do not find that Fagersta and Avesta or Gusab meet the criteria for collapsing affiliated companies. Therefore, we have applied the arm's-length test to these sales by comparing them to sales of identical merchandise from Fagersta to its unaffiliated home market customers. If these affiliated party sales satisfied the arm's-length test, we used them in our analysis (*see* Comments 1 and 2 for further discussion).

3. Cost of Production Analysis

As discussed in the preliminary determination, we conducted an investigation to determine whether Fagersta made sales of the foreign like product in the home market during the POI at prices below their cost of production (''COP'') within the meaning of section 773(b)(1) of the Act. We calculated COP based on the same methodology used in the preliminary determination on a model-specific basis, except where we modified the margin calculation program to correct for certain adjustments and updated cost data based on verification findings (*see* Final Calculation Memorandum).

For COP, we used Fagersta's revised SSWR COP data (utilizing the cost file based on billet COP incurred by its affiliated suppliers, Sandvik Steel and Avesta Sheffield, rather than the cost file based on billet transfer price) and SSUS's revised further manufacturing COP data, as submitted to the Department on March 16, and April 29, 1998, respectively. Based on our verification findings, we made the following adjustments to Fagersta's COP (*see* Final Calculation Memorandum):

1. We recalculated Sandvik Steel's selling, general, and administrative (''SG&A'') expense rate using company-wide expenses and cost of sales (''COS'') figures reported in Sandvik Steel's 1996 financial statements (*see* Comment 13 for a detailed discussion of adjustments).

2. We adjusted the G&A expense rate for Avesta Sheffield based on the company-wide expenses and COS figures reported in Avesta Sheffield's audited 1996 financial statements.

3. We adjusted Fagersta's G&A expense rate to correct an error in the company's computation.

4. We adjusted Fagersta's submitted actual variable overhead and fixed overhead to reflect the difference between the packing materials costs deducted in Fagersta's computation of its fabrication cost variance rate, and the packing materials costs submitted by the company during the Department's sales verification.

5. We adjusted SSUS's further manufacturing materials cost to reflect the unreconciled difference between the submitted materials cost and the materials cost reported in SSUS's normal accounting records.

6. We adjusted Fagersta's reported materials costs for SSWR such that the value of billets purchased from one of the company's affiliated suppliers, Avesta Sheffield, reflected the transfer price of the major input.

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product were made at prices below 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 the respondent's sales of a given product were made at prices below the COP, we disregarded the below-cost sales because such sales were found to be made within an extended period of time in ''substantial quantities'' in accordance with sections 773(b)(2)(B) and (C) of the Act, and because the below cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Where all contemporaneous sales of a specific product were made at prices below the COP, we calculated NV based on CV, in accordance with section 773(a)(4) and (e) of the Act.

We found that, for certain grades of SSWR, more than 20 percent of Fagersta's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining above-cost sales as the basis for determining NV if such sales existed, in accordance with section 773(b)(1). For those U.S. sales of SSWR for which there were no comparable (above-cost) home market sales in the ordinary course of trade, we compared export prices or constructed export prices to CV in accordance with section 773(a)(4) of the Act.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Fagersta's cost of materials, fabrication, SG&A, interest, and U.S. packing costs. Where appropriate, we calculated CV based on the methodology described above in the calculation of COP and added an amount for profit. In accordance with sections 773(e)(2)(A) of the Act, 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 foreign country. For selling expenses, we used the weighted-average home market selling expenses.

Price-to-Price Comparisons

For price-to-price comparisons, we calculated NV based on the same methodology used in the preliminary determination, with the following exceptions: based on verification, we corrected Fagersta's home market warranty expenses, inventory carrying costs, credit expenses and indirect selling expenses (see Final Calculation Memorandum for further discussion).

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where we compared CV to EP, we made a circumstance-of-sale adjustment by deducting from CV the weighted-average home market direct selling expenses and adding the weighted-average U.S. product-specific direct selling expenses in accordance with section 773(a)(6)(C)(iii) of the Act and 19 C.F.R. 351.410. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Currency Conversion

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank in accordance with section 773A of the Act.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent 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 the respondent.

Interested Party Comments

Sales Issues

Comment 1: Collapsing Fagersta, Sandvik and Kanthal AB.

Fagersta contends that the Sandvik Group (which includes Kanthal AB (''Kanthal''), Gusab, and AB Sandvik Steel (''Sandvik'')) fulfills the Department's collapsing test based on 19 C.F.R. 351.401(f). Fagersta states that it is affiliated with its billet producer and supplier, Sandvik, because Sandvik owns 50 percent of Fagersta. Fagersta also claims that Sandvik is a producer of similar or identical products and, as such, would not require substantial retooling in order to restructure manufacturing priorities. Respondent makes this claim based on the fact that Sandvik is a 100 percent owner of Kanthal, a subsidiary which has a tolling arrangement with Sandvik to process billets produced and supplied by Sandvik into the subject merchandise. Fagersta also states that, while Sandvik used the majority of the subject merchandise it purchased from Fagersta during the POI for internal consumption, Sandvik did export a small quantity of the subject merchandise during the POI (as reported to the Department), and has the capacity to continue exporting subject merchandise to the U.S. market in the future without substantial retooling. Fagersta states that Kanthal also sold the subject merchandise in the U.S. market during the POI. Finally, Fagersta states that there are interlocking directors between it and Sandvik which further contribute to the significant potential for the manipulation of price or production.

Fagersta contends that, because it and Sandvik should be collapsed, the major input rule would not apply in this case. Consequently, the Department should disregard the billet transfer prices between Sandvik and Fagersta and compute COP and CV based on Sandvik's billet production costs. In support of its position, Fagersta cites to *Final Results of Antidumping Duty Administrative Review: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 62 FR 18404 (April 15, 1997); *Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997) (*Nails from Taiwan*); *Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Fresh Cut Flowers from Colombia*, 63 FR 25447, 25448 (May 8, 1998) (*Flowers from Colombia*); and *Final Results of Antidumping Duty Administrative Review: Polyvinyl Alcohol from Taiwan*, 63 FR 32810 (June 16, 1998) (*PVA from Taiwan*).

The petitioners point to the same determinations in support of their contention that the Department should not collapse Fagersta and Sandvik because Fagersta has not demonstrated that Sandvik (the billet producer) has equipment within its facilities that could transform the billets into the subject merchandise, precisely as Fagersta does in its facilities without substantial retooling to restructure manufacturing priorities. Specifically, the petitioners maintain that Sandvik must enter into a tolling arrangement with an off-site company because it does not have the on-site capability to produce the subject merchandise. Consequently, the petitioners argue that the Department must find that Sandvik's facilities would have to be substantially retooled to restructure manufacturing priorities for subject merchandise. The petitioners further maintain that previous Department collapsing determinations indicate that the Department examines the facilities of the company it is considering collapsing, not the facilities of a separate company involved in a contractual tolling arrangement. In addition, the petitioners contend that there is no evidence on the record of this case which demonstrates that Sandvik and Fagersta are divisions of the same company. Moreover, the petitioners contend that Fagersta has failed to establish that its transactions with Sandvik are part of an integrated system directed solely at Sandvik's discretion. Finally, the petitioners contend that Fagersta has failed to provide evidence which demonstrates the extent to which managerial employees or board members of Sandvik sit on the board of directors of Fagersta or whether their business operations are intertwined, such as through shared sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the two entities. The petitioners also cite to *Final Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts from the United Kingdom*, 61 FR 54613, 54614 (October 21, 1996) (*Crankshafts from the U.K.*) in support of their argument.

DOC Position

We agree with Fagersta that Fagersta, Sandvik and Kanthal should be collapsed.

However, for the reasons explained below, we disagree that Fagersta and Avesta should be collapsed or that Fagersta and Gusab should be collapsed. For the preliminary determination, the Department did not collapse Fagersta, Sandvik, Kanthal, Avesta and Gusab. However, since the preliminary determination, we have reexamined the collapsing issue, taking into account the arguments advanced by the parties, as well as our own analysis and verification findings, with respect to the information on the record that is relevant to this issue. As a result of our reexamination, we now agree with Fagersta that Fagersta and its affiliates Sandvik and Kanthal should be collapsed. However, as we also explain, we disagree that Fagersta and its other affiliates, Avesta and Gusab, should be collapsed, as they do not meet the criteria for collapsing.

Pursuant to 19 C.F.R. 351.401(f), the Department will collapse producers and treat them as a single entity where (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, the Department will consider (1) the level of common ownership, (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (3) whether the operations of the affiliated firms are intertwined. (*See Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review,* 63 FR 12764, 12774 (March 16, 1998) and *Nails From Taiwan,* 62 FR at 51436.) Based on a totality of the circumstances, the Department will collapse affiliated producers and treat them as a single entity where the criteria of 19 C.F.R. 351.401(f) are met.

We find that Fagersta, Sandvik and Kanthal satisfy the first criterion in that they are affiliated with each other. Under section 771(33)(E) of the Act, persons are deemed to be affiliated where any person directly or indirectly owns, controls, or holds with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization. In this instance, Sandvik and Avesta are 50 percent owners of the joint venture respondent, Fagersta, which makes them both affiliates of Fagersta. In addition, Kanthal is a wholly-owned affiliate of Sandvik. *See also* 19 C.F.R. 351.102. Fagersta and Kanthal are also affiliated based on section 771(33)(F) of the Act, which provides that persons directly or indirectly under common control of any person are affiliates. In this case, Sandvik owns 50 percent of Fagersta and 100 percent of Kanthal so that these two entities would be under the common control of Sandvik.

Second, pursuant to 19 C.F.R. 351.401(h), we find that Sandvik is also a producer of the subject merchandise through its tolling arrangement with its wholly-owned subsidiary, Kanthal. Sandvik produces billets which are processed into SSWR by Kanthal for Sandvik.

Under this tolling arrangement, Sandvik retains title to the billets at all times and simply pays Kanthal a processing fee. Even though Kanthal may not be located on the same premises as Sandvik, this fact, contrary to the petitioners' contentions, does not make Sandvik any less a producer of the subject merchandise than if the subject merchandise were produced on its premises (*see PVA from Taiwan,* 63 FR 32810, 32813 (June 16, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8916 (February 23, 1998)). Thus, Sandvik is in fact a producer of merchandise that is identical or similar to that produced by Fagersta, and no retooling is required. In addition, we find that Kanthal is a producer of the subject merchandise in its own right and has the equipment in its facilities to produce subject merchandise that is identical or similar to that produced by Fagersta. Accordingly, we find the second collapsing criterion to have been met in that Sandvik, Kanthal and Fagersta are affiliated parties, each of which is a producer of identical or similar subject merchandise.

Finally, we also find that the operations of Sandvik, Fagersta and Kanthal are so intertwined that there exists a significant potential for manipulation of price or production if these affiliated producers were not collapsed. *See* 19 C.F.R. 351.401(f)(2). In particular, the level of common ownership is substantial as Sandvik owns 50 percent of Fagersta and 100 percent of Kanthal. Additionally, 50 percent of the management positions on Fagersta's board of directors are occupied by Sandvik officials (*see* Exhibit 4 of the Fagersta Sales Verification Report of Fagersta Stainless AB and Exhibit A–2 of May 19, 1998, Cost Verification Report of AB Sandvik Steel), and Fagersta is required to purchase only from Sandvik the billets that it processes into SSWR for sale to Sandvik. Further, Sandvik, Kanthal, and Fagersta also share information concerning sales, production, and pricing (*see* page 13 of volume 1A of Fagersta's February 2, 1998, supplemental questionnaire response).

On the other hand, while we find that Fagersta is affiliated with Avesta and Gusab for the same reasons that it is affiliated with Sandvik, we find that neither Avesta nor Gusab is a producer of the subject merchandise. In particular, no evidence has been placed on the record indicating that either Avesta or Gusab produces the subject merchandise at its own facility or could produce the merchandise without substantially retooling their facilities, or that either may be considered a producer by way of a tolling arrangement like Sandvik. Therefore, despite their affiliation with Fagersta, we have not collapsed either Avesta or Gusab with Fagersta under 19 C.F.R. 351.401(f).

In this instance, based on a totality of the circumstances, Fagersta, Sandvik and Sandvik's wholly-owned subsidiary Kanthal meet the criteria for purposes of being collapsed and treated as a single entity. In this respect, it is not necessary, as the petitioners appear to suggest in referring to *Crankshafts from the United Kingdom,* that Fagersta and Sandvik be divisions of the same company for collapsing purposes. Because we have collapsed Fagersta, Sandvik and Kanthal, we find that the major input rule does not apply in this instance and have used Sandvik's billet costs as the basis for COP. In the case of Avesta, since we have not collapsed Fagersta and Avesta, we find that the major input rule under section 773(f)(2) and (3) of the Act does apply and have therefore used the higher of the transfer price or billet cost (no information on the market value of billets was available) as the basis for calculating COP and CV for the subject merchandise.

Comment 2: Home Market Affiliated Sales Transactions.

Fagersta contends that, in this case, the Department's arms-length test fails to capture the basic distinction between its market-price SSWR sales to unaffiliated parties and affiliated parties because for its affiliated sales, Fagersta negotiates the processing fee with its affiliated parties (*i.e.,* Sandvik Group) for converting Sandvik billet into SSWR for delivery to Sandvik's wire mills. Therefore, Fagersta maintains that this special arrangement within the Sandvik Group in the home market, including Fagersta's role as strictly a processor of billet into SSWR, should compel the Department to treat Fagersta's home market affiliated sales as outside the ordinary course of trade. Fagersta cites to the *Final Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Mexico,* 63 FR 12764, 12770 (March 16, 1998) and 19 C.F.R. 351.403(c) in support of its argument. Alternatively, Fagersta argues that the Department should adjust the prices of its home market affiliated party sales to reduce the distortion created by Sandvik's presence at both the billet and wire stage by making a level of trade adjustment or exclude these sales from its analysis because the major input rule does not apply in this case.

The petitioners contend that if Fagersta's home market affiliated sales pass the Department's arm's-length test, the Department must use these sales in the final determination because Fagersta has provided no basis for excluding such sales. The petitioners maintain that the Department should find Fagersta's arguments that it is a division of the same company as its suppliers, or that it meets the criteria for being collapsed with its suppliers, are completely unsupported by evidence in the record of this case and should be rejected by the Department.

DOC Position

We agree in part with Fagersta. We have not used Fagersta's home market sales to Sandvik because we find that Fagersta and Sandvik meet the criteria for collapsing affiliated producers (*see* Comment 1 above). Therefore, we find that the arm's-length test does not apply with respect to Fagersta's home market sales of subject merchandise made to Sandvik. Regarding Fagersta's home market sales to Gusab and Avesta Welding, we find that neither Fagersta and Avesta Welding nor Fagersta and Gusab meet the criteria for collapsing affiliated companies (*see* Comment 1 above). Moreover, we do not find that these sales were made outside the ordinary course of trade. We find that Fagersta's sales to its affiliated end users, Avesta Welding and Gusab, were similar in nature to the home market sales made to its unaffiliated customers. However, in attempting to apply the arm's-length test to the sales to Avesta's affiliate, we find no sales of identical merchandise made to Fagersta's unaffiliated home market customers to match. Moreover, we do not find that Fagersta made any U.S. sales of merchandise that was identical to the merchandise sold to Avesta's home market affiliate. Therefore, we have not used these sales in our analysis (*see Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062 (July 9, 1993)). In applying the arm's-length test to Fagersta's sales to Gusab, we do find sales of identical merchandise to match to sales Fagersta made to unaffiliated customers. Therefore, we have used these sales in our analysis if they passed the arm's-length test.

Comment 3: Level of Trade.

Fagersta claims that it has provided evidence that its sales within the Sandvik Group occur at a different marketing stage, involving substantially different selling functions, than its sales to unaffiliated home market and U.S. customers. In addition, Fagersta claims that it has demonstrated that it provides premium services during the integrated sales and marketing process for affiliated customers which its unaffiliated home market and U.S. customers either do not receive, or receive to a lesser extent. Therefore, Fagersta contends that because a substantial difference in selling activities and price comparability exists between the home market Sandvik Group transactions and unaffiliated home market or U.S. sales, the Department must recognize that there is a difference in marketing stages and grant it a LOT adjustment. Fagersta cites to *Final Results of Antidumping Duty Administrative Review: Certain Stainless Wire Rods from France,* 61 FR 47874, 47880 (September 11, 1996) (*Wire Rods from France*) in support of its argument.

The petitioners contend that the Department should not grant Fagersta a LOT adjustment or CEP offset because Fagersta has not demonstrated in this case that its home market sales are at a different LOT than its U.S. sales. Specifically, the petitioners state that Fagersta has failed to demonstrate that its sales to unaffiliated and affiliated customers in the home market were not made through the same channel of distribution and to the same category of customer. With regard to the premium services Fagersta claims it provides its affiliated customers, the petitioners maintain that the documentation on the record does not support a finding that substantive differences exist between services provided for sales to affiliated and unaffiliated customers. Moreover, the petitioners argue that Fagersta has not demonstrated that the difference in selling functions and activities between its affiliated home market customers and U.S. customers establishes a difference in marketing stages. Therefore, the petitioners maintain that Fagersta has not demonstrated that there is difference in selling functions as a result of different selling activities associated with home market and U.S. sales. Finally, the petitioners contend that Fagersta has failed to correlate any LOT difference with a pattern of consistent price differences between sales at different LOT in the home market.

DOC Position

We agree with the petitioners. A LOT adjustment can increase or decrease normal value (*see* Statement of Administrative Action (''SAA''), H. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. 829 (1994)). The SAA directs the Department to ''require evidence from the foreign producers that the functions performed by the sellers at the same level of trade in the U.S. and foreign markets are similar, and that different selling activities are actually performed at the allegedly different levels of trade.'' *Id. See also Final Results of Antidumping Duty Administrative Review: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands,* 63 FR 13204, 13206 (March 18, 1998). Thus, to properly establish the LOT of the relevant sales, the Department specifically requests LOT information in every antidumping proceeding, regardless of whether a respondent sells solely to one nominal customer category, such as end-users. Moreover, consistent with that approach, we note that of necessity, the burden is on a respondent to demonstrate that its categorizations of LOT are correct. The respondent must do so by demonstrating that selling functions for sales at allegedly the same level are substantially the same, and that selling functions for sales at allegedly different LOTs are substantially different.

As a matter of policy, the Department does not permit a respondent to submit data selectively to support its own conclusions with regard to LOT. Specifically, Fagersta stated in its questionnaire response that its home market sales were made through one channel of distribution to essentially one customer category (*i.e.*, direct sales from the mill to the end user).

Moreover, Fagersta's description in its response of its customer categories and channel of distribution in the U.S. market for its EP sales was almost identical to its description of those factors in the home market (*see* pages A–14 and A–15 of the October 24, 1997, Fagersta Questionnaire Response). Subsequently, Fagersta filed a supplemental questionnaire response where it reversed its claim that there was no basis for a LOT adjustment (*see* page nine of the February 2, 1998, Supplemental Questionnaire Response). In its supplemental response, Fagersta claimed that its home market sales to Gusab occur at a different marketing stage than its home market sales to unaffiliated customers. Specifically, Fagersta stated its sales to Gusab begin with the acquisition of billet from Sandvik and Fagersta's SSWR price to Gusab is pegged to Sandvik's billet price. For its sales to unaffiliated customers, Fagersta stated that the sale begins with the sale of rod by Fagersta without any reference or linkage to the price of the billet and without any involvement by the billet supplier (either Gusab's parent or Avesta Sheffield) in the transaction (*see* verification exhibit 15J of the May 11, 1998, Fagersta Sales Verification Report).

In addressing Fagersta's argument that the Department should take into account the sale of billets from Sandvik to Fagersta as a distinct marketing stage for purposes of a LOT adjustment for Fagersta's sales of SSWR back to the affiliated Sandvik Group, we note that the statute is only concerned with possible differences in the level of trade between the NV and the EP or CEP of the subject merchandise. *See* section 773(a)(7)(A) of the Act. Billets are raw material inputs used in the production of the SSWR, the subject merchandise. Billets are not included in the scope of subject merchandise and, therefore, are not subject merchandise. Accordingly, the stage of the production process where Sandvik sells billets to Fagersta for further processing into SSWR is not relevant for purposes of determining whether sales of the subject merchandise in the home market and U.S. market are at different LOTs. Moreover, Fagersta has failed to show why the billet price setting practice with Sandvik translates into different selling functions with respect to Gusab and Fagersta's unaffiliated customers.

Notwithstanding Fagersta's LOT claims, it is the Department's responsibility, not Fagersta's, to determine LOTs. If a respondent claims that different LOTs exist, it has the burden of demonstrating that. We make no presumption as to the number of LOTs in a market. Rather, the respondent must provide information which satisfactorily demonstrates what LOTs exist. In this case, Fagersta has failed to meet its burden of proof of demonstrating that there are in fact two separate LOTs.

To make a proper determination as to whether home market sales are at a different LOT than U.S. sales, the Department examines whether the home market sales are at different stages in the marketing process than the U.S. sales. 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 LOT. An analysis of the chain of distribution and of selling functions substantiates or invalidates claimed LOTs based on customer classifications. Different LOTs necessarily involve differences in selling functions of the subject merchandise, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the LOT. Different LOTs 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 LOT, we make a LOT adjustment if the difference in LOT affects price comparability. We determine any effect on price comparability by examining sales at different LOTs in a single market, the home market. To quantify the price differences, we calculate the difference in the average of the net prices of the same models sold at different LOTs. We use the average difference in net prices to adjust the NV when it is based on a LOT different from that of the export sale. If there is a pattern of no price differences, then the difference in LOT does not have a price effect, and no adjustment is necessary.

As stated above, the Department begins its LOT analysis with an examination of the different distribution systems or channels of trade. Normally, transactions at different LOTs occur at different points in the distribution system, which are reflected in the commercial designation of customer categories, such as end-user or distributor, and selling functions that support such commercial designations. In this case, Fagersta sold to end-users in both the U.S. and home markets. It is undisputed that these transactions constitute sales through the same channel of trade. This indicates that distinct LOTs do not exist in this situation.

Further, an analysis of selling functions supports this conclusion. We conducted a comprehensive examination of the available information on selling functions provided by Fagersta in this case. The Department requested information on selling functions in the original questionnaire and supplemental questionnaire and examined the data with respect to selected sales at verification.

With respect to Fagersta's home market sales to its affiliate Sandvik, we find that Fagersta and Sandvik should be collapsed in this case. Therefore, we find Fagersta's argument that a LOT adjustment with respect to home market sales made to Sandvik is moot as we excluded those sales from our analysis. With respect to Fagersta's home market sales to its affiliates Gusab and Avesta Welding, based upon our analysis of the information submitted on the record, we do not find that the selling functions performed by Fagersta with respect to these affiliated customers and its sales to unaffiliated home market customers to be meaningfully different.

Specifically, Fagersta has repeatedly claimed that it provides premium services to its affiliated customers, Gusab and Avesta Welding, but not to its unaffiliated customers. However, we find that the vast majority of the selling functions were identical. Thus, the critical element in establishing different LOTs is the degree to which these selling functions are performed with respect to the different customers. In this instance, we do not find the evidence concerning the alleged differences in the degree to which selling functions are performed with respect to affiliated and unaffiliated customers establishes different LOTs. Fagersta maintains that although it provides technical cooperation and warranty services to both its affiliated and unaffiliated customers, the services Fagersta provides to its affiliated customers are more substantial in that it provides only its affiliated customers with (1) mandatory reservation of production capacity to ensure priority production and delivery; (2) intensive technical cooperation; (3) access to proprietary information; (4) networked data exchange; (5) specialized product applications; (6) just-in-time delivery; and (7) billet rebates. Fagersta has attempted to emphasize these alleged differences noted above by providing documents from meetings Fagersta held with respect to affiliated and unaffiliated customers (*see* verification exhibits 27A through 27D of the Fagersta Sales Verification Report). However, in reviewing these verification exhibits, we do not find that they establish that the services and assistance provided to Fagersta's affiliated customers are significantly different from the services and assistance provided to Fagersta's unaffiliated U.S. customers. Specifically, the following agenda items were discussed in both meetings for affiliated and unaffiliated customers: product quality issues, production issues and problems, production testing analysis, and customer disputes (*see* exhibits 27A through 27D of the Fagersta Sales Verification Report). With respect to the agenda items not mentioned in meetings held on unaffiliated customers but mentioned in meetings held on affiliated customers (*i.e.*, employee exchange programs, joint marketing discussions, coordination of billet production and delivery with rod processing and delivery within the Sandvik Group), these agenda items would necessarily be topics of discussion between affiliated producers of the subject merchandise or between affiliated parties which used the subject merchandise for their own accounts. Thus, we find that the agenda items where Fagersta discussed its affiliated and unaffiliated customers are similar for both customer categories (*see* exhibits 27A through 27D of the Fagersta Sales Verification Report). Although the minutes of meetings held for affiliated customers are more detailed than the minutes of meetings held for unaffiliated customers, we find that the agenda items discussed in meetings for both customer types indicate a central focus on Fagersta ensuring the quality of the merchandise and Fagersta's ability to deliver the product to the customer's specifications. As such, we do not find that there is a significant difference in the degree to which Fagersta performs selling functions between its affiliated home market and unaffiliated U.S. customers. Thus, we disagree with Fagersta that a distinct marketing stage exists for its sales to affiliated home market customers, and further find that there is no substantial difference in selling functions between affiliated and unaffiliated customers in the home and U.S. markets.

Section 773(a)(7)(B) of the Act states that a CEP ''offset'' may be made when two conditions exist: (1) normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP; and (2) the data available do not provide an appropriate basis for a level of trade adjustment. In this case, since we have found no difference in the LOT of the sales in question, for the reasons noted above, we do not find that a CEP offset adjustment is warranted.

Comment 4: SSUS' EP Transactions.

The petitioners argue that the Department must treat SSUS's EP sales as CEP sales because the Department found at verification that the reported EP sales were also warehoused at SSUS, and that the verification report reflects that finding. Moreover, the petitioners contend that because these sales were introduced into SSUS' physical inventory, SSUS would have necessarily incurred inland freight charges for these sales which makes SSUS more than a mere processor of sales documentation. Based on the Department's criteria for classifying sales as EP, the petitioners urge the Department to treat these EP sales as CEP sales.

Fagersta maintains that the verification report is in error in that SSUS' EP sales did not enter its physical inventory, although they did enter its financial accounts since SSUS took title to the merchandise. Moreover, Fagersta maintains that verification exhibits containing bills of lading, freight bills, sales invoices and shipping orders for the sales in question demonstrate that these sales were shipped directly to the customer and did not enter physical inventory in the United States. Therefore, since these sales did not incur a warehouse expense, Fagersta argues that the Department should continue to treat these sales as EP since they meet the criteria for classifying sales as EP.

DOC Position:

We agree with Fagersta. For the EP sales in question, we find no evidence that these sales entered into the physical inventory, as opposed to the financial inventory, of SSUS, prior to sale. We find that the freight and delivery documentation for selected EP sales examined at verification indicates that the subject merchandise was shipped directly from Sweden to the U.S. customer's requested delivery location. The petitioners' contention that the Department's verification report states that the EP sales transactions in question entered the physical inventory of SSUS is incorrect. Based on the examined freight and delivery documentation at verification, we conclude that the inventory journal records both merchandise that was physically located at SSUS' warehouse as well as merchandise which did not enter SSUS' warehouse but to which SSUS had title. For the sales in question, we also find, based on the information examined at verification, that the sales followed customary commercial channels between the parties involved and that the function of SSUS was limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unrelated customer (*see Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China,* 62 FR 9160, 9171 (February 28, 1997)). Therefore, we treated the sales in question as EP sales.

Comment 5: Exclusion or Inclusion of Certain ASI Sales.

The petitioners contend that, based on verification, the Department should remove three sales from the U.S. sales listing (*i.e.,* ASI invoice nos. 119548, 122141, and 124740) because these sales were outside the POI. In addition, the petitioners contend that the Department should include one sale, determined at verification to be included both in the U.S. sales listing as well as the exclusion worksheet, if that sale was inside the POI (*i.e.,* ASI invoice number 115936).

Fagersta contends that for the three sales in question, although the ASI invoice date was outside the POI, the Fagersta invoice date was inside the POI. Therefore, Fagersta maintains that these three sales were correctly included in its U.S. sales listing and that the Department should use these sales in the final determination. For the other sale in question, Fagersta contends that the sale consisted of two shipments from it, one of which originated from a Fagersta invoice with an invoice date prior to the POI. Therefore, Fagersta maintains that it correctly included in the U.S. sales listing the ASI sale in which the Fagersta invoice date was in the POI and correctly excluded the ASI sale in which the Fagersta invoice date was prior to the POI. Therefore, Fagersta argues that based on the verification findings, it is unnecessary for the Department to make revisions to the U.S. sales listing for these sales.

DOC Position

We disagree with the petitioners' argument to exclude the three sales from Fagersta's U.S. sales listing. Fagersta reported its U.S. sales transactions through its U.S. affiliate ASI as EP sales because Fagersta determines the terms of sale (*see* pages 15 and 17 of the Fagersta verification report and pages 8 and 9 of the ASI Verification Report). For its reported EP sales transactions, Fagersta used as the date of sale the date of its sales invoice to the U.S. unaffiliated customer. The Fagersta invoice is also sent to ASI which also issues a sales invoice to the U.S. unaffiliated customer with the same terms of sale specified on the Fagersta sales invoice. However, in a few cases, the ASI sales invoice included merchandise covered by more than one Fagersta sales invoice. For the three sales mentioned by the petitioners, the sales have an ASI invoice date outside the POI as noted in the invoice issued by ASI. However, we determined that they were properly included in the U.S. sales listing because they correspond to Fagersta invoice dates, which are within the POI. (Fagersta, which shipped the merchandise directly to the U.S. customer, reported all of its sales to the Department based on whether its invoice dates, not ASI's invoice dates, were within the POI). We did not note any discrepancies or inconsistencies with Fagersta's sales database as far as its quantity and value reconciliation (*see Fagersta Sales Verification Report* at page 9). Furthermore, verification of the ASI sales listing showed that these three sales observations were manually added to the database in order to be reconciled with Fagersta's reported quantity and value (*see ASI Verification Report* at page 7).

We reviewed documentation concerning the other sale, which was included both in ASI's sales listing and its exclusion worksheet (*see* Exhibit 8 of the *ASI Verification Report*). At verification, we noted that the sale in question was invoiced by ASI as one sale, but that it actually consisted of merchandise covered by two Fagersta invoices. Of these two Fagersta invoices, one has a date prior to the POI, and therefore, was properly excluded by ASI from the U.S. sales listing. The other Fagersta invoice has a date during the POI and, therefore, was properly included by ASI in the U.S. sales listing (*see ASI Verification Report* at page 7).

Comment 6: Model Matching.

The petitioners contend that the Department should not rely on Fagersta's own internal grade designations for products that would otherwise fit within a standard AISI grade simply because Fagersta has added small amounts of chemicals that are not otherwise specified as being included in the standard AISI grade designation. Therefore, the petitioners urge the Department to ensure that all internal product codes designated by Fagersta in its questionnaire responses correspond to a standard AISI grade code for matching purposes. Otherwise, the petitioners allege that the methodology of relying on internal grade designations for products that are only sold in the home market impermissibly allows Fagersta to exclude certain high-priced sales in the home market from the model match process simply by giving these internal grade designations a special model match code that would never allow it to be compared to a U.S. sale with a different code. Finally, the petitioners contend that Fagersta has incorrectly applied the model matching methodology devised by the Department by classifying several grades in two or more very similar AISI grades. For the final determination, the petitioners request that the Department collapse all AISI/AWS grades into their simplest three-digit configuration based on the suggestions contained in their case brief.

Fagersta contends that it has grouped its internal grades into bona fide AISI/AWS norms where possible, and reported proprietary internal grades only where its internal grade did not fall within the chemical specifications of any recognized AISI/AWS standard, in accordance with the Department's instructions. Fagersta further contends that the Department thoroughly tested the accuracy and consistency of its internal grade to AISI/AWS assignment at verification and found no discrepancies. Alternatively, Fagersta states that if the Department were to accept the petitioners' proposed alternative to collapse all AISI/AWS grades that begin with the same three numbers for purposes of grouping its internal grades, the Department would be departing from its own instructions. Moreover, Fagersta maintains that the petitioners' application of their proposed alternative contained in their case brief is inconsistent as it pertains to grouping Fagersta's internal grades. Finally, Fagersta states that although it does not object to collapsing all AISI/AWS grades into their simplest three-digit configuration, it would object if the Department does not undertake this collapsing across the board to all AISI/AWS grades.

DOC Position

We agree with Fagersta. We examined at verification the method Fagersta used to assign standard AISI/AWS grades to its internal grades based on the chemical specifications of the internal grade. We find that Fagersta consistently applied its grade assignment methodology in accordance with the Department's instructions contained in our questionnaire. Therefore, we do not agree with the petitioners that Fagersta classified several grades in two or more very similar AISI grades. Finally, we do not agree with the petitioners that we should collapse all AISI/AWS grades into their simplest three-digit configuration since this alternative would collapse unique AISI/AWS grades which differ principally because of a slight, though not insignificant, difference in certain chemicals which define the AISI/AWS grade.

Comment 7: SSUS Interest Rate.

Fagersta contends that the Department incorrectly calculated the short-term interest rate derived from verification exhibits and must correct this typographical error if it intends to use the short-term interest rate based on SSUS' POI short-term borrowings for purposes of SSUS' credit expenses and inventory carrying costs.

The petitioners contend that the Department should only use an interest rate which is based on short-term loans and should use the interest rate as discussed in the verification report to calculate credit expenses and inventory carrying costs.

DOC Position

We agree with Fagersta. Whenever possible the Department uses short-term interest rates based on actual loan agreements (*see Policy Bulletin 98–2: Imputed Credit Expenses and Interest Rates* (February 23. 1998)). SSUS's short-term loan agreements included in verification exhibit 26 reflect the only short-term loans entered into during the POI. Therefore, the Department calculated the short-term interest rate based on actual SSUS POI short-term loan agreements contained in verification exhibit 26 for purposes of determining SSUS credit expenses and inventory carrying costs. Specifically, we used the interest rate noted in Fagersta's post-verification May 28, 1998, submission and not the interest rate noted in our verification report which was in error (*see* Final Calculation Memorandum for further details).

Comment 8: Corrections to Certain SSUS and Amstek Expenses and Corrections to Dates of Sale for Certain SSUS Sales.

The petitioners contend that the Department should revise SSUS' early payment discounts, duty and brokerage and handling expenses and inland freight warehouse transfers for all sales and the dates of sale for certain sales transactions based on the verification findings. In addition, the petitioners contend that the Department should revise Amstek warranty expenses based on the verification findings.

Fagersta states that the Department should correct for the clerical errors identified by Fagersta or otherwise found by the Department based on the verification findings.

DOC Position

For the reasons stated above, we agree with both parties and have revised the above mentioned company-specific discounts and expenses based on our verification findings for purposes of the final determination.

Comment 9: SSUS' International Freight Expense.

The petitioners contend that Fagersta should have reported the actual international freight expense incurred for certain transactions rather than an average international freight expense. The petitioners maintain that this error is so egregious that the Department should use facts available to calculate this expense for those transactions affected by the error. For facts available, the petitioners urge the Department to use the highest calculated international freight expense for all sales rather than their revised calculations.

Fagersta contends that the Department's verification demonstrated that for the sales in question, it had incorrectly reported an average freight expense when it should have reported the transaction-specific expense for these sales based on its claim that these sales should be treated as EP transactions instead of as CEP transactions. Fagersta also contends that it provided the Department the transaction-specific freight expenses for these sales at verification which were examined by Department officials. Therefore, Fagersta maintains that the error in question is minor in nature and that the Department should use the transaction-specific expenses and not resort to adverse facts available for its claimed EP sales transactions for purposes of the final determination.

DOC Position

We agree with Fagersta. We examined the correct expense data for the sales in question at verification. Since we have treated these sales as EP transactions, we find that Fagersta erred in reporting an average POI international freight expense for its EP sales transactions when it should have reported the average expense for its CEP sales transactions only. Therefore, we used the actual freight expenses for the EP sales transactions, based on our verification findings.

Comment 10: Quantity Variable Used in Margin Program.

Fagersta claims that in its preliminary margin calculation program, the Department overstated the total U.S. quantity and value figures by using the same quantity variable to derive weighted-average U.S. prices, selling expenses, packing expenses, commissions and exchange rates as it did to determine the total U.S. sales quantity and U.S. sales value for purposes of calculating the dumping margin. To correct this error, Fagersta urges the Department to use the appropriate variable to derive the U.S. sales quantity and value.

The petitioners did not comment on this issue.

DOC Position

We agree with Fagersta and made the appropriate change in the final calculation margin program (*see* Final Calculation Memorandum).

Cost Issues

Comment 11: Calculation of CV Profit.

Fagersta claims that in the margin program for the preliminary determination, the Department erred in its calculation of CV profit by using an improper denominator. According to Fagersta, the Department calculated the amount of CV profit by: (1) Calculating a profit rate by dividing the total profit earned on home market sales by the company's production costs inclusive of only manufacturing costs, G&A and interest expenses, and (2) applying this profit rate to the sum of manufacturing costs, selling, G&A and interest expenses to derive the amount of profit. Thus, Fagersta contends that the profit rate was not calculated and applied on a consistent basis, resulting in an overstatement of the profit included in CV.

The petitioners argue that the methodology used by the Department to calculate CV profit was proper and in accordance with its established practice.

DOC Position

We disagree with Fagersta that we incorrectly calculated CV profit. In our preliminary margin program, we calculated CV profit in the following manner: (1) We calculated the total profit earned on home market sales and divided the profit by total production costs, inclusive of only manufacturing costs, G&A and interest expenses to derive a profit rate; (2) we then multiplied the calculated profit rate by the sum of manufacturing costs, G&A and interest expenses. Contrary to the Fagersta's claim, we did not include selling expenses in our calculation of CV profit. Thus, we calculated and applied the profit rate on a consistent basis. Accordingly, we did not make any changes in the final margin program with respect to calculation of CV profit.

Comment 12: Sandvik's Reported General Expenses.

The petitioners contend that in calculating the cost of the billets that Fagersta purchased from its affiliated supplier, Sandvik Steel, the Department should make the adjustments to Sandvik's submitted general expenses that it identified in its verification report. That is, according to petitioners, Sandvik's general expenses should be derived on a company-wide basis using the company's 1996 audited financial statement. Moreover, petitioners note that the Department should adjust the component of the general expenses representing Sandvik Holding Company's general and administrative (''G&A'') expense to reflect costs that the Department found to be inappropriately excluded from billet production costs.

Fagersta argues that the Department should accept the general expenses reported in Sandvik's normal internal accounting system at the product line level, rather than computing a company-wide rate. Alternatively, Fagersta contends that if the Department uses a company-wide rate, it must exclude research and development expenses and selling expenses incurred by product lines that are unrelated to the subject merchandise.

In addition, Fagersta disputes the petitioners' assertion that the Department determined Sandvik Holding Company's G&A rate to be incorrect. According to Fagersta, the Department simply noted that insurance expenses paid to a subsidiary and a write-down of internal receivables were both excluded from the G&A computation. Fagersta argues that these items were properly excluded from Sandvik Holding's G&A rate because both are inter-company expenses that are eliminated in the consolidated financial statements of Sandvik AB.

DOC Position

We disagree with Fagersta's contention that the Department should accept Sandvik's reported general expense rate computation. Our normal methodology for allocating general expenses to individual products is to calculate a rate by dividing the company's general expenses by its total COS, as reported in the respondent's audited financial statements (*see* the Department's standard Section D questionnaire at page D–17). This method recognizes that general expenses are costs that relate to the company's overall operations, rather than to the operations of a division within the company or to a single product line (*see Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products From Japan*, 58 FR 37154, 37166 (July 9, 1993). The approach is intended to recognize the general nature of these expenses and the fact that many of these expenses are incurred in supporting a range of the overall company's various operations. This approach is consistent with Generally Accepted Accounting Principles (''GAAP'') treatment of such costs as period expenses.

In its submission, Sandvik deviated from the Department's normal methodology and calculated its general expenses using an internal accounting methodology, under which the company charged some general expenses directly to specific product lines, while allocating other such expenses across product lines. When a respondent abandons a normal Department methodology in favor of an alternative one, it is incumbent upon the respondent to satisfy a higher threshold for proving the reasonableness and accuracy of its chosen approach. In this case, however, Sandvik did not provide any documentation or support for the methodology underlying the allocation of its general expenses among different divisions and product lines within the company. In addition, Sandvik did not clearly differentiate between general expenses incurred directly at a product-line level and those amounts incurred at the higher, divisional and parent company levels. Although during verification Sandvik Steel presented data showing that, for managerial reporting purposes, the company followed the multi-tiered allocation of general expenses reported for COP and CV, the company did not demonstrate whether this system more accurately captured general expenses of the subject merchandise than under the Department's normal, company-wide calculation method. Specifically, Sandvik failed to demonstrate that expenses it allocated to both subject and non-subject merchandise were, indeed, the expenses incurred for those particular products. Further, Sandvik presented no evidence as to the reasonableness of its internal accounting system. In effect, at verification, Sandvik documented how its general expenses were spread throughout the company, but provided no documentation to support the resulting accuracy or validity of such reporting. Because Sandvik failed to adequately demonstrate that only those general expenses (including R&D and selling expenses) that were completely unrelated to subject merchandise were excluded from its submitted general expense rate calculation, the Department recomputed Sandvik's general expense rate on a company-wide basis, in accordance with its normal methodology.

We further disagree with Fagersta's assertion that the insurance expenses that Sandvik Holding Company paid to a subsidiary and the write-down of internal receivables should be excluded from the calculation of the Sandvik Holding Company component of Sandvik's general expense rate. Fagersta's justification that both are internal items that are eliminated in Sandvik AB's consolidation is irrelevant. The Department does not compute general expenses at the consolidated level. The fact that these expenses are related to transactions with affiliated parties does not negate the fact that they are expenses incurred by Sandvik Holding Company. Therefore, we computed the Sandvik Holding Company component of Sandvik's general expense rate, inclusive of the insurance expenses and the write-down of internal receivables.

Comment 13: Adjustments to Avesta Cost Data.

The petitioners contend that because the Department did not conduct a full-scale verification of Avesta's COP data, it must make the same adjustments to Avesta's SSWR billet COP data as it intends to make to Sandvik's SSWR billet COP data based on verification at Sandvik.

Fagersta argues that the Department should not make any adjustments to Avesta's general expenses or manufacturing costs to correspond to adjustments to Sandvik's reported SSWR billet production costs simply because the Department did not conduct a complete cost verification of Avesta. Fagersta maintains that Avesta reported its costs in accordance with its books and records and that the Department did not note any significant errors in Avesta's cost submission during verification.

DOC Position

We disagree with the petitioners' assertion that we must make the same numerical adjustments to Avesta's SSWR billet COP data as we make to Sandvik's SSWR billet COP data. We note, however, that we intend to apply consistent methodologies to both companies. In this regard, the only adjustment to Sandvik's SSWR billet COP made by the Department relates to Sandvik's general expense rate. The Department tested Avesta's submitted general expense rate during verification and adjusted the rate to reflect Avesta's company-wide general expenses in a manner consistent with our treatment of Sandvik's general expenses.

Comment 14: Standard Material Cost Discrepancy.

The petitioners state that Sandvik's reported billet costs incorrectly reflect the company's 1995, rather than 1996, standard costs. The petitioners contend that the Department should adjust Sandvik's submitted SSWR billet COP to account for the difference between 1995 and 1996 standard costs.

Fagersta claims that the Department did not identify any errors in Sandvik's standard costs or actual manufacturing costs for producing billets. Further, Fagersta claims the 1995 versus 1996 standard cost discrepancy necessitates no adjustment to Fagersta's reported costs because Fagersta reported its actual manufacturing costs in accordance with its normal books and records. Fagersta asserts that such a standard cost discrepancy adjustment would overstate costs by using standards that are not reflected in the audited financial statements and would ignore a corresponding offset for the increase in the favorable material cost variance.

DOC Position

We disagree with the petitioners' assertion that the Department should adjust Sandvik's submitted SSWR billet COP to account for the difference between the 1995 and 1996 standard costs. At the Department's request, Fagersta submitted its SSWR production costs under two different scenarios, one based on the transfer price of billets purchased from affiliated suppliers and the other based on the cost of producing these billets. The issue addressed above by the petitioners and the respondent, as raised in the Department's cost verification report, regards the accuracy of the Fagersta SSWR product specific material (billet) cost, based on billet transfer price. Because it involves Fagersta's standard costs used in its normal accounting system to record purchases of billets, it does not have an impact on any margin calculations that are based on the billet suppliers' cost of production. Rather, it only has an impact on Fagersta's SSWR production costs based on the billet transfer price. Additionally, because Fagersta's error was in failing to revise its 1995 standard costs to reflect its computed 1996 standard costs for billets purchased from Sandvik, it should only have an impact on Fagersta material costs for SSWR made with billets purchased from Sandvik. Because the Department is collapsing Fagersta and Sandvik, the major input rule should not be used to value the billets purchased from Sandvik. Rather, Fagersta's usage of Sandvik sourced billets should be based on Sandvik's billet COP. Therefore, there is no need to adjust Fagersta's submitted costs based on billet transfer prices to reflect the difference between the 1995 and 1996 standard cost of the billets purchased from Sandvik.

Comment 15: Revisions to SSUS' G&A and Interest Expenses.

The petitioners contend that the Department should increase both SSUS' reported G&A expense rate and financial expense rate applied in determining further manufacturing costs, based on the errors presented by SSUS officials at verification.

Fagersta contends that verification findings reflect a difference in rounding methodology used by SSUS and by the Department. Therefore, Fagersta maintains that the errors the petitioners propose be made have so small an effect on the final margin that the Department need not make any changes in this regard in its final determination.

DOC Position

We disagree with the petitioners' claim that we should increase both SSUS's reported G&A expense rate and financial expense rate. However, as we indicated at page 44 of our May 19, 1998, verification report, Fagersta corrected the SSUS G&A rate in the revised further manufacturing cost file submitted on April 29, 1998, and there is no need to adjust the financial expense. The Department determined that the Sandvik financial expense factor, rather than the SSUS factor, should be applied to SSUS further manufacturing costs. The financial expense requires no adjustment to reflect Sandvik's factor because it would have no impact on the reported costs.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Sweden, that is entered, or withdrawn from warehouse, for consumption on or after March 5, 1998 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Fagersta Stainless AB	5.71
All Others	5.71

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded all zero and *de minimis* weighted-average dumping margins from the calculation of the ''All Others'' rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 20, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–20021 Filed 7–28–98; 8:45 am]

BILLING CODE 3510–DS–D

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–583–828]

Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan

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

EFFECTIVE DATE: July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Alexander Amdur, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4740 or (202) 482–5346, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351, 62 FR 27296 (May 19, 1997).

Final Determination

We determine that stainless steel wire rod (SSWR) from Taiwan is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

The preliminary determination in this investigation was issued on February 25, 1998. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Stainless Steel Wire Rod from Taiwan,* 63 FR 10836 (March 5, 1998) (*Notice of Preliminary Determination*). Since the preliminary determination, the following events have occurred:

On March 12, 1998, we received a submission from Yieh Hsing Enterprise Corporation, Ltd. (Yieh Hsing) alleging that the Department made ministerial errors in the preliminary determination. In response to Yieh Hsing's ministerial error allegations, we issued an amended preliminary determination on March 30, 1998. See *Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Taiwan,* 63 FR 16972 (April 7, 1998).

In March 1998, we issued supplemental questionnaires to and received responses from the respondents in this case, Walsin Cartech Specialty Steel Corporation (Walsin) and Yieh Hsing (hereinafter ''respondents'').

In March, April, and May 1998, we verified the sales and cost questionnaire responses of these two respondents. In June 1998, Yieh Hsing submitted revised sales databases at the Department's request.

The petitioners (*i.e.,* AL Tech Specialty Steel Corp., Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., and the United Steel Workers of America, AFL–CIO/CLC) and the respondents submitted case briefs on June 8 and 10, 1998, and rebuttal briefs on June 16 and 17, 1998. We held a public hearing on June 18, 1998.

Scope of Investigation

For purposes of this investigation, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches diameter. Two stainless steel grades, SF20T and K–M35FL, are excluded from the scope of the investigation. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon	0.05 max.
Manganese	2.00 max.
Phosphorous	0.05 max.
Sulfur	0.15 max.
Silicon	1.00 max.
Chromium	19.00/21.00.
Molybdenum	1.50/2.50.
Lead	Added (0.10/0.30).
Tellurium	Added (0.03 min.)

K–M35FL

Carbon	0.015 max.
Nickel	0.30 max.
Silicon	0.70/1.00.
Manganese	0.40 max.
Phosphorous	0.04 max.
Sulfur	0.03 max.
Chromium	12.50/14.00.
Lead	0.10/0.30.
Aluminum	0.20/0.35.

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1996, through June 30, 1997.

Fair Value Comparisons

To determine whether sales of SSWR from Taiwan to the United States were made at less than fair value, we compared the Export Price (EP) and/or Constructed Export Price (CEP) to the Normal Value (NV). Our calculations followed the methodologies described in the preliminary determination, except as noted below and in company-specific analysis memoranda dated July 20, 1998.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States,* 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Investigation'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

We made product comparisons based on the same characteristics and in the same general manner as that outlined in the preliminary determination. As in the preliminary determination, in instances where a respondent has reported a non-AISI grade (or an internal grade code) for a product that falls within an AISI category, we have used the actual AISI grade rather than the non-AISI grade reported by the respondents for purposes of our analysis. In instances where the chemical content ranges of a reported non-AISI grade (or an internal grade code) are outside the parameters of an AISI grade, we have used the non-AISI (or internal) grade code reported by the respondents for analysis purposes. However, in instances in which an internal grade matches all the specified chemical content tolerance ranges of an AISI grade, but the internal grade also contains amounts of chemicals that are not otherwise specified as being included in the standard AISI designation, we have used the corresponding AISI grade rather than the internal grade. For further discussion, *see Comment 2* and *Comment 16* in the ''Interested Party Comments'' section of this notice.

Export Price/Constructed Export Price

For Walsin, we used EP and CEP methodology as defined in sections 772(a) and 772(b) of the Act. For certain unreported CEP sales made during the POI by Carpenter Technology Corp. (Carpenter), Walsin's U.S. affiliate, we applied facts available in accordance with Section 776(a) of the Act. For the reasons stated in the *DOC Position* to *Comment 1* in the ''Interested Party Comments'' section of this notice, we determined that adverse inferences in selecting among the facts otherwise available are not warranted in this instance. Therefore, as facts available, we applied the weighted-average margin calculated for all reported sales to the unreported CEP sales at issue.

For Yieh Hsing, we used EP methodology as defined in section 772(a) of the Act. In the preliminary determination, we reclassified some of Yieh Hsing's U.S. sales of SSWR as CEP sales. Based on the record developed since the preliminary determination, the Department has reconsidered its decision and has accepted Yieh Hsing's classification of all of its U.S. sales of SSWR as EP sales for purposes of the final determination. For further discussion, *see Comment 18* in the ''Interested Party Comments'' section of this notice.

A. Export Price

We calculated EP based on the same methodology used in the preliminary determination, with the following exceptions:

Walsin

We corrected for certain clerical errors found during verification with respect to Walsin, including the corrections to the response that Walsin identified in the course of preparing for verification and reported in its May 11, 1998 submission.

Yieh Hsing

We made additional deductions from the starting price, where appropriate, for U.S. handling and other charges, U.S. customs duties, harbor maintenance and merchandise processing fees (which are included in U.S. duties), and U.S. entry fees, pursuant to section 772(c)(2)(A) of the Act.

We corrected for certain clerical errors found during verification with respect to Yieh Hsing's calculations, including gross unit price, foreign inland freight, foreign brokerage and handling, U.S. commission, entry fees, U.S. handling and other charges, and U.S. credit expenses.

B. Constructed Export Price

We calculated CEP for Walsin based on the same methodology used in the preliminary determination, with the following exceptions:

We corrected for certain clerical errors found during verification with respect to Walsin, including the corrections to the response that Walsin identified in the course of preparing for verification and reported in its May 11, 1998 submission. We made additional deductions from starting price for U.S. brokerage expense pursuant to section 772(c)(2)(A) of the Act (*see Comment 9* in the ''Interested Party Comments'' section of this notice).

We recalculated indirect selling expenses incurred in the United States as a result of our findings at verification (*see Comment 1* in the ''Interested Party Comments'' section of this notice and the July 20, 1998 Memorandum from Laurel LaCivita to the File, *Walsin-Cartech Specialty Steel Corporation: Concurrence Memorandum for the Final Determination* (Walsin Concurrence Memorandum).

Normal Value

We used the same methodology to calculate NV as that described in the preliminary determination, with the following exceptions:

A. Walsin

We corrected for certain clerical errors found during verification with respect to Walsin, including the corrections to the response that Walsin identified in the course of preparing for verification and reported in its May 11, 1998 submission.

B. Yieh Hsing

We included all of Yieh Hsing's home market sales to affiliated customers in our analysis because we determined that these sales were made at arm's-length prices and thus in the ordinary course of trade.

We corrected for certain clerical errors found during verification with respect to Yieh Hsing's calculations, including interest revenue and inland freight.

Cost of Production

We calculated the weighted-average cost of production (COP), by model, based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative (SG&A) expenses and packing costs in accordance with section 773(b)(3) of the Act. We relied on the submitted COP except in the following specific instances where the submitted costs were not appropriately quantified or valued:

A. Walsin

We made changes based on our findings at verification with respect to Walsin's reported yield loss. (*See Comment 11* in the ''Interested Party Comments'' section of this notice and Memorandum to Christian Marsh from Stan Bowen and Laurens Van Houten dated July 20, 1998 (''Walsin Cost Memo'')). We revised Walsin's submitted general and administrative (G&A) expense factor to include idle capacity, miscellaneous income and expenses, salvage income, and loss on the sale of equipment. (*See Comment 13* in the ''Interested Party Comments'' section of this notice and Walsin Cost Memo). We adjusted the reported transfer price for copper purchased from an affiliate to reflect the market price. (*See Comment 14* in the ''Interested Party Comments'' section of this notice and Walsin Cost Memo).

B. Yieh Hsing

Yieh Hsing failed to report a unique COP for each of the product categories it reported on its computer sales listing. Therefore, we used the COP of the most similar model for each missing product category. (*See* Memorandum to Christian Marsh from Stan Bowen and Laurens Van Houten dated July 20, 1998 (''Yieh Hsing Cost Memo'')). We adjusted the cost of billets that Yieh Hsing obtained from an affiliated supplier to reflect the higher of the market price, transfer price, or COP of the billets. In addition, we adjusted the cost of the billets that Yieh Hsing obtained from its affiliate to include revised G&A and interest expenses of the affiliate, bonus payments that the affiliate paid to its employees, and the cost of billet freight from the affiliate to Yieh Hsing. We adjusted the cost of sales figure used to compute Yieh Hsing's G&A and interest expense rates by the amount of its scrap revenue. This resulted in a revision to reported G&A and interest expense. We further adjusted the calculation of Yieh Hsing's G&A expense rate by including bonus payments that Yieh Hsing paid to its employees, and by excluding certain foreign exchange gains, gains on the disposal of long-term investments and properties, investment loss, and rental income. For further discussion, *see Comments 24, 25 and 26* in the ''Interested Party Comments'' section of this notice; and Yieh Hsing Cost Memo.

We also conducted our sales below cost test in the same manner as that described in our preliminary determination. We found that, for certain models of SSWR, more than 20 percent of Walsin's and Yieh Hsing's home market sales within an extended period of time were at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of SSWR for which there were no comparable home market sales in the ordinary course of trade, we compared EPs or CEPs to CV in accordance with section 773(a)(4) of the Act.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, G&A, U.S. packing costs, direct and indirect selling expenses, interest expenses, and profit. We relied on the submitted CVs except for the specific changes described above in the ''Cost of Production'' section of the notice.

Price-to-Price Comparisons

We made price-to-price comparisons using the same methodology as that described in the preliminary determination, with the following exceptions:

A. Walsin

In making circumstance-of-sale adjustments to NV for comparison to EP sales under section 773(a)(6)(C)(iii) of the Act and section 351.410(c)(4) of the regulations, we recalculated home market and U.S. credit expenses as a result of our findings at verification (*see Comment 7* in the ''Interested Party Comments'' section of this notice). For comparisons to both EP and CEP sales, as a result of our findings at verification, we also recalculated inventory carrying costs and indirect selling expenses incurred in the home market that were used in our calculation of the commission offset (*see Comments 7* and *8* in the ''Interested Party Comments'' section of this notice and the Walsin Concurrence Memorandum).

B. Yieh Hsing

In making circumstance-of-sale adjustments to NV for comparison to EP sales under section 773(a)(6)(C)(iii) of the Act and section 351.410(c)(4) of the regulations, we made additional adjustments for interest premium expenses and letter of credit fees. Furthermore, because we verified that Yieh Hsing properly calculated inventory carrying costs in its responses submitted subsequent to the preliminary determination, we included inventory carrying costs in the weighted-average amount of home market indirect selling expenses used to offset U.S. commissions in calculating NV. For further discussion, *see Comment 21* in the ''Interested Party Comments'' section of this notice.

Price-to-CV Comparisons

For Walsin, we made price-to-CV comparisons using the same methodology as that described in the preliminary determination.

Currency Conversion

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank in accordance with Section 773(A) of the Act.

Interested Party Comments

A. Walsin

Comment 1: Treatment of Verification of CEP Sales.

The petitioners claim that the Department's verification report covering Carpenter's CEP sales outlines serious issues, omissions, and errors that were discovered at verification. They argue that these errors and omissions were so material and so pervasive as to make the response unreliable for purposes of calculating a final antidumping duty margin. The petitioners note that these errors and omissions impeded the proceeding and prevented the Department from verifying Carpenter's questionnaire response. Consequently, the petitioners urge the Department to use adverse facts available in calculating the margin for Walsin's CEP sales and to apply the highest rate calculated for either EP or CEP sales to all of Carpenter's CEP sales for the final determination.

The petitioners claim that Carpenter did not intentionally fail verification as suggested by Walsin. Rather, they argue that Carpenter provided information to Walsin, which was submitted to the Department in consolidated form in Walsin's questionnaire responses. Carpenter also provided certifications for that information, and participated in a verification of CEP sales at Carpenter's headquarters. The petitioners note that throughout the investigation, Walsin's counsel was in the role of assisting Carpenter, including being present at Carpenter's verification.

The petitioners argue that the Department's inability to verify Carpenter's CEP information has no connection to Carpenter's intent and status as one of the petitioners in this investigation. They further maintain that the statute requires the use of facts otherwise available in reaching a determination if any of the following circumstances are present: (1) Necessary information is not available on the record; (2) someone withholds information requested by the Department; (3) someone fails to provide such information by the deadlines or in the form and manner requested; (4) someone significantly impedes a proceeding; or (5) someone provides information but the information cannot be verified. The petitioners note that the statute directs the Department to apply facts otherwise available without making a specific finding of intent not to cooperate.

Walsin argues that any verification failure by Carpenter, the principal petitioner in this investigation, should be adverse to Carpenter's interest and not adverse to Walsin. Walsin notes that some of the information that was required to be reported on the CEP sales was in the exclusive possession and control of Carpenter, whose primary interest during the POI was domestic production of SSWR rather than importation of SSWR from Taiwan. Consequently, Walsin contends that Carpenter may not have had an interest in the success of the CEP verification. In the event that the Department is unable to use the submitted CEP information and must apply facts available in the final determination, Walsin argues that the Department should use the lowest non-aberrant, transaction-specific margin from Walsin's verified EP sales for all of the CEP transactions.

DOC Position

We discovered at verification that there were certain significant errors and deficiencies in the information submitted on the record by Carpenter. The Department's verification report of June 2, 1998, cited the following important deficiencies in the verification of Carpenter's information: Carpenter failed to report a significant percentage of sales and price adjustments to covered merchandise in its computer sales listing; Carpenter was not able to substantiate the amount of indirect selling expenses reported in its questionnaire response; and, for certain sales, Carpenter failed to report all of the freight expenses that it incurred to transport merchandise from the port and warehouse to the customer in the United States.

Section 776(a) of the Act provides that the Department may use facts otherwise available if an interested party withholds information that has been requested by the Department, fails to provide such information or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified. Section 776(b) states that the Department may use an inference which is adverse to the interest of the party in selecting from among the facts otherwise available if the party has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information.

Our analysis of the information presented on the record indicates that adverse inferences with respect to Walsin's CEP sales are not warranted, as suggested by the petitioners. With respect to U.S. indirect selling expenses and U.S. freight charges, the Department has verified information to use to correct the deficiencies for these expense items. As facts available, for indirect selling expenses, we used the verified selling expenses recorded on Carpenter's audited trial balance for the specialty steel division and adjusted for freight and commissions. We derived an indirect selling expense factor by dividing the amount of indirect selling expenses by the total value of sales recorded on the audited financial statements for the specialty steel division. We applied the factor to gross price, and used the resulting per unit indirect selling expense in our calculations. With respect to the unreported freight expenses discovered at verification, we applied the additional verified freight expense to the reported freight expense for the affected sales, and used the resulting revised per unit freight charge in our calculations. For further discussion of these issues, see Walsin Concurrence Memorandum.

With respect to Carpenter's failure to report a significant number of CEP sales and price adjustments on its computer sales listing, we have determined not to use adverse inferences in applying facts available to account for such information. Given the nature of the relationship between Walsin and Carpenter; Carpenter's participation in this proceeding as a petitioner; and Carpenter's exclusive control of the sales and price information at issue, we find that Walsin was not in a position to report this information. Given these unusual circumstances, we have not determined that Walsin failed to act to the best of its ability to comply with the Department's request for information. Therefore, in applying facts available, we used the weighted-average margin for all of Walsin's reported sales to the CEP sales that were not reported to the Department in the course of the investigation. For further discussion, *see* the Walsin Concurrence Memorandum.

Comment 2: Model Match.

The petitioners disagree with the findings at verification, as outlined in the Department's June 2, 1998 verification report at page 5, that Walsin accurately identified which products fit into AISI codes in the ''Content and Property Tolerance'' charts submitted in Walsin's March 22, 1998, second supplemental questionnaire response. The petitioners contend that Walsin incorrectly coded several grades, and assigned more than one grade code to the same grade of material. The petitioners provided a table in their case brief identifying what they believe to be the most appropriate grade codes identifying the products sold in the home and U.S. markets.

Walsin contends that the petitioners failed to explain the methodology used to revise Walsin's grade code system. In addition, Walsin notes that there are obvious errors in the petitioners' code designations. Therefore, Walsin argues that the Department should disregard the petitioners' concordance in its entirety.

DOC Position

We agree with both the petitioners and the respondent in part. Verification revealed that the six-digit internal chemistry code contained in Walsin's product model number provides the most accurate information concerning the chemical content of each grade of steel identified in exhibit 13 of the October 24, 1997 Section A response. We found no discrepancies between the information provided in the questionnaire responses of October 24, 1997; November 12, 1997; January 20, 1998; and March 31, 1998; and the primary source documents used by the factory to produce and test the chemical specifications of the subject merchandise.

However, upon further examination, we found that Walsin often assigned more than one commercial grade name to each six-digit internal chemistry code in the normal course of business, and that it assigned grade codes for the Department's product matching purposes to each of its internal commercial grade names. As a result, in certain instances, more than one grade code applied to the same grade of merchandise. Therefore, we conducted an analysis of Walsin's grade code designations for all of Walsin's models sold in the U.S. and home market. We compared the AISI codes identified in the GRADE1 field of the March 31, 1998 response with the grade code designations in Walsin's original section B and C response of November 12, 1997. If the grade code reported for a particular model in the March 31, 1998 response differed from that in the November 12, 1997 response, we assigned to that model a grade code corresponding to the AISI grade in the GRADE1 field. These adjustments allowed us to assign a unique grade code to each AISI grade identified in the GRADE1 field of the March 31, 1998 response. Therefore, all models identified as AISI 304 in the GRADE1 field, for example, would have the same grade code designation.

We then compared the recommendations presented in the petitioners' case brief with Walsin's code designations, and our revised grade code designations. In the event that either the petitioners or the Department disagreed with Walsin's grade code designations, we compared the internal chemistry of each model in question with the AISI standards presented in the *Worldwide Guide to Equivalent Irons and Steels,* and followed the methodology outlined in the ''Fair Value Comparisons'' section of the notice. The results of our analysis are recorded in the Walsin Concurrence Memorandum.

Comment 3: Level-of-Trade Adjustment.

The petitioners claim that the Department should not change the level-of-trade analysis performed in the preliminary determination, and should continue to deny a level-of-trade adjustment in the final determination. The petitioners note that even with slight differences in levels of selling expenses, Walsin provided similar selling functions in both the home and U.S. markets. Thus, there is no reason for the Department to make any changes regarding level of trade in its analysis for the final determination.

Walsin notes that it did not request a level-of-trade adjustment for the preliminary determination.

DOC Position

We conducted a level-of-trade analysis for the preliminary determination and found that all of Walsin's sales were made at the same level of trade. We subsequently verified the information on which our preliminary level-of-trade analysis was based. For a discussion, *see Notice of Preliminary Determination* at page 10837, and the *Concurrence Memorandum for Preliminary Determination of Investigation* dated February 25, 1998. No record evidence has been presented since our preliminary determination that would lead us to change our analysis. Therefore, we have not made a level-of-trade adjustment for purposes of the final determination.

Comment 4: Second Quality Merchandise.

The petitioners argue that the Department should exclude sales of second quality merchandise from the pool of home market sales used to calculate the margin in the final determination. It notes that Walsin did not report such sales in its computer sales listing.

Walsin notes that it reported sales of second-quality merchandise on its computer sales listing as indicated by the letter ''U'' at the end of the product model number.

DOC Position

We agree with both the petitioners and Walsin. An examination of the March 31, 1998 computer sales listing reveals that Walsin reported sales of second-quality merchandise on its computer sales listing as indicated by the letter ''U'' at the end of the product model number. We agree with the petitioners that these sales should not be used in our margin analysis since Walsin made no sales of second-quality merchandise to the United States. This is consistent with the rationale outlined in the preliminary determination. (*See Notice of Preliminary Determination* at page 10838.)

Comment 5: Affiliation in the Home Market.

The petitioners contend that the Department should regard two of Walsin's home market customers as affiliated parties for the purposes of this investigation, and disregard any home market sales that are not found to be made at arm's length.

The petitioners claim that Walsin had a ''close relationship'' with one of the customers in question in which Walsin acquired an ownership stake shortly after the POI, and to which it sold a significant amount of SSWR during the POI. They claim that the volume of sales and the knowledge that the acquisition was about to occur would have affected the price negotiations between Walsin and its customer during the POI.

The petitioners claim that Walsin directly or indirectly owned, controlled or voted five percent or more of the outstanding shares of the other customer in question during the POI. Therefore, the petitioners argue that the Department should consider this customer to be affiliated with Walsin, conduct an arm's-length test on the sales between Walsin and the customer at issue, and disregard from its margin analysis any sales which were not made at arm's length during the POI.

Walsin claims that the petitioners presented no support for the contention that Walsin had a ''close supplier relationship'' with its two customers during the POI. Walsin notes that the Department confirmed at verification that Walsin did not have any long-term investments in these two companies during the POI. In addition, Walsin points out that in the Department's long-standing practice, the ''close supplier'' relationship alone is insufficient to support conducting an arm's-length test, even when the sales at issue are subject to a 100% exclusive buy-sell arrangement between the parties.

DOC Position

We conducted extensive tests at verification to determine whether Walsin had any ownership of these two companies during the POI and found that Walsin had no ownership of either of these two companies during the POI.

In light of the issues raised by the parties, we considered whether Walsin was affiliated with these companies within the meaning of section 771(33) of the Act and section 351.102(b) of the Department's regulations. An analysis of the verified information on the computer sales listing demonstrates that the sales that Walsin made to these customers account for only a small portion of its total sales during the POI, and that a significant portion of the customers' purchases of SSWR come from producers other than Walsin (*see* Walsin Concurrence Memorandum). Based on these facts, we cannot conclude that Walsin has close supply relationships with the parties at issue in the home market within the meaning of section 351.102(b) of the Department's regulations. Based on the foregoing analysis, we have not considered these parties to be affiliated for the purposes of the final determination.

Comment 6: Home Market Sales of Merchandise Produced in France.

The petitioners argue that the Department should include in its final determination home market sales of a certain grade of merchandise which Walsin claimed was produced in France and which Walsin failed to report in its computer sales listing. The petitioners argue that Walsin was not able to document at verification that this merchandise was actually manufactured in France, as claimed in the questionnaire response. Consequently, the petitioners argue that the Department should make adverse inferences concerning these sales by not making any adjustments for selling expenses incurred on these sales in the calculation of NV.

Walsin claims that it provided the Department a clear documentary trail establishing that this merchandise was produced in France and not produced during the POI. Walsin further notes that its sales of this merchandise were not made in the ordinary course of trade, as they consisted of sales of either second-quality or trial-grade merchandise. Therefore, Walsin argues that the use of such sales would have a distortive effect on the determination of NV and should be excluded from the Department's final analysis.

DOC Position

We agree with the petitioners in part. Verification revealed that Walsin made a significant number of home market sales of the grade of merchandise at issue which Walsin claimed was produced in France and which it had not previously reported to the Department. At verification, Walsin was not able to provide documentary evidence that this merchandise was produced in France, as it claimed in its questionnaire responses. Therefore, we have included these sales in our final analysis. However, because Walsin made no sales of this merchandise in the United States during the POI, and this merchandise has not been identified as one of the most similar grades of steel for comparison to any products sold in the United States, the application of adverse facts available is unnecessary in reaching our final determination.

Comment 7: The Interest Rate Used for Credit Expense and Inventory Carrying Cost.

The petitioners argue that the Department should recalculate the interest rate used for credit expenses and inventory carrying costs in the United States and home market using adverse facts available, since verification revealed that Walsin's interest rate was based on the theoretical interest rate on all short-term loans that were outstanding on the last day of the fiscal year, rather than on the actual interest rate obtained by the company on its short-term loans.

Walsin disagrees, claiming that it reported a figure for the total value of loans which ties directly to the company's financial statements. It maintains that this figure is a reliable indicator of the interest rate because it ties to the financial statements. Walsin argues that the figure is reasonable and should be used in the final determination.

DOC Position

We agree with the petitioners. We found at verification that Walsin improperly reported both the value of its loans and interest payments during the POI. Walsin's reporting methodology did not allow the Department to determine prior to verification that any problems existed in the company's method for determining its interest rate, and to request that Walsin revise its methodology accordingly.

Section 776(a)(1) of the Act provides that the Department may use facts available in situations in which the necessary information is not available on the record. Section 776(b) states that the Department may use an inference which is adverse to the interest of the party in selecting from among the facts otherwise available if the party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority.

Since Walsin did not provide the information that was required by the Department in order to determine the appropriate interest rates to be used in the calculation of U.S. and home market credit expenses and inventory carrying costs incurred in the home market, and since the provision of this information was within its control, we determined that Walsin has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. Therefore, we determined that it is appropriate to make adverse inferences in this case. Therefore, as adverse facts available for credit expense, we used the lowest short-term interest rate obtained in the home market and reported in verification exhibit 18 to recalculate short-term credit expenses for home market sales. For EP sales, we used the prime interest rate as defined by the Federal Reserve Bank to recalculate short-term credit expenses. For inventory carrying cost incurred in the home market, we have used in our final calculations the highest per-unit expense reported in the May 11, 1998 submission for U.S. sales and the lowest per-unit expense reported in the May 11, 1998 submission for home market sales.

Comment 8: Indirect Selling Expenses in the Home Market.

The petitioners contend that the Department must recalculate home market indirect selling expenses to exclude direct selling expenses, foreign inland freight and travel expenses to foreign countries in accordance with our verification findings.

Walsin agrees that the reported home market indirect selling expenses included export expenses, inland freight, marine freight and royalty expenses that had already been included in direct selling expenses, and thus the amount of home market indirect selling expenses reported on the computer sales listing was overstated.

DOC Position

We agree with both the petitioners and Walsin that the reported home market indirect selling expenses incorrectly included certain direct selling expenses and export-related expenses that were reported elsewhere in Walsin's response. In order not to double-count these expenses in our calculations, we have adjusted the figures accordingly for use in the final determination.

Comment 9: The Inclusion of U.S. Brokerage and Handling in Movement Expenses.

The petitioners argue that the Department erroneously neglected to deduct U.S. brokerage and handling from Walsin's gross U.S. price.

Walsin did not comment on this issue.

DOC Position

We agree and have corrected the error.

Comment 10: Minor Corrections to the Response.

Walsin submitted a number of corrections at the start of the sales and cost verification. It claims that the Department reviewed those corrections as a part of its regular verification process, and therefore requests that the corrections be accepted for the purposes of the final determination.

DOC Position

We examined the corrections presented at the beginning of verification and have accepted them with the exception of those relating to inventory carrying costs (*see Comment 7* for the treatment of inventory carrying costs).

Comment 11: Yield Loss.

Walsin argues that it accurately reported the yield loss incurred throughout the entire SSWR manufacturing process. To support its position, Walsin states that the Department should reexamine several accounting worksheets that the verifiers took as cost verification exhibits 14, 15, and 16. According to Walsin, these exhibits, which calculate the company's cumulative yield loss, demonstrate that it accurately reported its yield loss. Thus, Walsin argues that there is no basis to make any further adjustment in this regard. Walsin states further that if the Department does adjust its reported yield loss, it cannot rely on certain production reports taken as cost verification exhibit 30. According to Walsin, these reports only show the realized yield of its first grade products and not the accumulated yield of both first and second grade products. Therefore, Walsin claims that the yield rate reported on this exhibit is inaccurate for calculating the cost associated with its yield loss.

The petitioners contend that the Department should adjust Walsin's reported costs to reflect the fact that they do not adequately account for the company's yield loss. The petitioners argue that the Department cannot accept Walsin's reported costs because the company has understated its reported cost of manufacturing. Thus, the petitioners suggest that the Department should either adjust Walsin's reported costs according to verification findings, substitute costs based on facts available, or completely reject Walsin's costs.

DOC Position

We disagree with Walsin that it has adequately accounted for its yield loss incurred in manufacturing SSWR. For the calculation of COP and CV, we found that Walsin applied the yield loss of each production stage only to the costs incurred in that stage. This methodology, however, fails to properly account for yield costs incurred in previous stages which are input into the subsequent stages. Thus, the reported yield loss amounts do not accurately capture the actual overall yield loss incurred by the company in producing SSWR. Walsin should have calculated its reported yield loss amount by applying each production stage's yield loss rate to the sum of each stages's preceding and current production costs. In fact, Walsin calculates its overall yield loss in the ordinary course of business in the same manner by combining its previous production stage's costs with the current production stage's costs. Walsin then divides the total costs by finished output to calculate a yielded cost (*see* the last three pages of cost verification exhibit 14). As referenced by Walsin in its case brief, cost verification exhibit 14 contains worksheets that depict the company's normal recognition of its overall yield loss for a single model on a per-unit basis. We note, however, that the fully yielded material costs at the final stage of manufacturing are different from the material costs reported in Walsin's cost database. For its reported costs, Walsin only reported a material cost that it yielded at the billet manufacturing stage. This results in a yield loss that is less than the actual overall yield loss of the fully processed product. For the final determination, we adjusted Walsin's reported billet costs for the yield loss rate experienced in the rolling, annealing, and pickling production processes. We computed the yield loss rate for these production processes based on the information used by Walsin in the ordinary course of business to compute a fully yielded material cost. Walsin provided this information in cost verification exhibit 8.

Comment 12: Flood Damage Loss.

Walsin asserts that the Department should not consider the company's flood damage loss component of COP. Walsin explains that in its normal course of business it treated the loss as an extraordinary item and not a manufacturing or general expense item because it was the result of an unusual and infrequent occurrence. According to Walsin, this treatment is in accordance with Taiwanese Generally Accepted Accounting Principles (GAAP) and, thus, the Department should accept it. Moreover, the respondent argues that the exclusion of this cost reasonably reflects the costs associated with producing SSWR and it avoids aberrant cost fluctuations. Walsin also notes that in *Certain Fresh Cut Flowers From Columbia* 62 FR 19772, 19778 (April 8, 1997), the Department allowed the respondent a similar exclusion for severe water damage and consequent loss of production.

The petitioners argue that the Department should include the loss from the flood in Walsin's calculation of COP and CV. According to the petitioners, Walsin incurred the expenses associated with the flood during normal operations. Thus, it is appropriate that the Department include this expense in the calculation of COP and CV.

DOC Position

We agree with Walsin that it is appropriate in this case to exclude its flood damage loss from the calculations of COP and CV. Walsin reported that during the POI, the area in which Walsin's manufacturing plant is located received a historically high amount of rainfall over a short period of time. The excessive amount of rainfall caused the local levy to break and flood the surrounding area. Because of the flood, Walsin incurred out-of-the-ordinary cleanup expenses and losses associated with the write-off of damaged equipment and supplies. Consistent with our position in the *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled From Japan*; 61 FR 38139, 38153 (July 23, 1996) (''*LNPP from Japan*''), it is the Department's practice to allow respondents to exclude out-of-the-ordinary losses if such losses stem from an accident that constitutes an unforeseen disruption in production which is beyond the management's control. *See Uruguay Round Agreements Act Statement of Administrative Action* (SAA) at 162. In such instances, we rely on the actual costs incurred for production exclusive of the costs associated with the unforeseen event.

At verification, we confirmed that the flood and the damages resulting from the flood were unforseen and beyond management's control. Therefore, for the final determination, we did not include any of the additional expenses incurred as a result of the flood in the calculation of COP and CV.

Comment 13: Idle Capacity Loss.

Walsin argues that the Department should not include its idle capacity loss in the calculation of COP and CV because it is an extraordinary loss. According to Walsin, this loss consists of the idle depreciation expense on plant and equipment that was not in use or was underutilized during the POI. Walsin maintains that because the company is a relatively new producer it determined that it was reasonable to classify this type of cost as extraordinary until the company reaches a normal production level. Moreover, Walsin emphasizes that classifying this cost as extraordinary is appropriate and acceptable under Taiwanese GAAP. Therefore, Walsin requests that the Department follow Taiwanese GAAP which considers the idle capacity loss charge as extraordinary, and exclude the loss from the calculation of COP and CV.

The petitioners disagree, stating that the Department should include Walsin's idle capacity loss, which the company reported on its audited income statement, in the calculation of COP and CV. According to the petitioners, the Department is directed to adjust a respondent's cost if it determines that the respondent has shifted costs away from production of the subject merchandise as stated in the SAA.

DOC Position

We disagree with Walsin that we should exclude its idle capacity loss from the calculation of COP and CV. As

Walsin has noted, the idle capacity loss consisted of depreciation expense that the company incurred on holding idle production assets. For this type of expense, it is our normal practice to include it as part of G&A. For instance, in the *Final Results of Antidumping Duty Administrative Review: Silicomanganese From Brazil*, 62 FR 37869, 37871 (July 15, 1997) and *Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread From Malaysia*, 61 FR 54773, 54772 (October 22, 1996), we considered ''idle depreciation to be period costs (*i.e.*, costs that are more closely related to the accounting period rather than the current manufacturing costs) and included the expense in our calculation of G&A expenses.'' As for Walsin's contention that its idle capacity loss is an extraordinary expense under Taiwanese GAAP and should therefore be excluded from the company's reported costs, we disagree. Simply because a company characterizes certain expenses as extraordinary in the ordinary course of business in accordance with its home market GAAP does not mean the cost automatically is the result of an unforeseen disruption in production that is beyond management's control and should therefore be excluded from COP and CV (*see LNPP from Japan* at 38153). In this instance, we see nothing unusual or unforeseen about depreciation expense incurred on idle assets for a manufacturing company. Thus, for the final determination we have included Walsin's idle capacity loss in the calculation of its COP and CV.

Comment 14: Transfer Price for Copper.

The petitioners state that the Department should revise the reported transfer price for copper obtained from affiliates to reflect the market value paid to non-affiliates. According to the petitioners, the reported transfer price is less than the purchase price of comparable copper obtained from non-affiliates. Based on these facts, the petitioners maintain that the Department should revise the reported transfer price for copper to reflect the market value.

Walsin contends that the transfer price for copper included in its reported costs should not be revised. According to Walsin, there is no evidence to support that the affiliated-party copper sales were not made on an arm's-length basis. Therefore, Walsin states that the Department should not revise the transfer price of copper in Walsin's reported section D database.

DOC Position

We agree with the petitioners. We compared the reported transfer price paid for copper purchased from an affiliated supplier to reported market prices and the affiliated suppliers' cost, and found that the average market price was the highest. We performed this comparison in accordance with section 351.407(b) of the Department's regulations, which sets forth the method by which the Department will determine value under the major input rule for the purposes of section 773(f)(3) of the Act. This provision, which applies to the calculation of both CV and COP, states that the Department will determine the value of a major input purchased from an affiliated person based on the higher of: (1) the price paid by the exporter or producer to the affiliated person for the major input; (2) the amount usually reflected in sales of the major input in the market under consideration; or (3) the cost to the affiliated person of producing the major input. We have relied on this methodology in the *Final Results of Antidumping Duty Administrative Review; Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada*, 62 FR 18449, 18457 (April 15, 1997), *Final Results of Antidumping Duty Administrative Review; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom*, 62 FR 2081, 2115 (January 15, 1997), and the *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or less in Outside Diameter, and Components Thereof, From Japan*, 61 FR 57629, 57644 (November 7, 1996). In this case, we found the market price to be higher than the reported transfer price and the affiliated suppliers' cost. Thus, for the final determination, we have increased Walsin's affiliated supplier's copper cost to reflect the market value paid by non-affiliates.

B. Yieh Hsing

Comment 15: Modification of Control Numbers.

Yieh Hsing argues that the Department should not modify Yieh Hsing's reported control numbers (CONNUMs) as Yieh Hsing reported in its March 31, 1998 submission. Yieh Hsing claims that the Department verified that Yieh Hsing correctly assigned the CONNUMs in accordance with AISI grades, and in accordance with the Department's instructions.

The petitioners agree with the respondent, except in two cases: 1) if the Department decides to reclassify grades for all respondents based on any general model-match decisions, and 2) if the Department decides to reclassify one of Yieh Hsing's steel grades based on its verification findings (*see Comment 16* below).

DOC Position

For purposes of the final determination, we have continued to employ the same general model-match methodology as that outlined in the preliminary determination (*see* ''Fair Value Comparison'' section of this notice for further discussion.) Therefore, there is no need to generally reclassify the grades reported by Yieh Hsing and verified by the Department. (*See* also *DOC Position* to *Comment 16* below).

Comment 16: Classification of An Internal Grade.

The petitioners disagree with Yieh Hsing's classification of one of its internal grades as AISI grade 304. The petitioners argue that this internal grade is more appropriately classified as another AISI grade, and request that the Department reclassify this internal grade accordingly. The petitioners base their argument on the chemical specifications listed on the mill certificate for this grade that were discussed in the Department's verification report.

Yieh Hsing argues that the Department should not reclassify this steel grade. Yieh Hsing contends that the Department verified that Yieh Hsing correctly classified this grade as AISI 304. Yieh Hsing also states, based on the chemical specifications of this grade that it reported to the Department, that this grade may not be classified as the AISI grade suggested by the petitioners. Yieh Hsing also notes that the Department verified for one selected home market transaction that the grade at issue met the specifications for AISI grade 304. Yieh Hsing also argues that if, notwithstanding these facts, the Department still decides to reclassify this grade as the AISI grade requested by the petitioners, the Department should recalculate COP and CV for the latter grade to reflect the reclassification.

DOC Position

We agree with Yieh Hsing. Based on our review at verification of a mill certificate for the grade at issue, we found that this grade meets the specifications of AISI grade 304, and does not meet the specifications of the grade proposed by the petitioners, or of any other AISI grade of which we are aware. Furthermore, we note that in instances in which an internal grade matches all the specified chemical content tolerance ranges of an AISI grade, but that the internal grade also contains chemicals that are not otherwise specified as being included in the standard AISI designation, it is appropriate to classify the internal grade as the AISI grade. We therefore have accepted Yieh Hsing's classification of this grade as AISI grade 304 in the final determination. For further discussion, *see* Memorandum from Alexander Amdur to Holly Kuga on *Yieh Hsing Enterprise Corporation, Ltd.: Analysis of Issues Raised in the Case and Rebuttal Briefs for the Final Determination* (Yieh Hsing Concurrence Memorandum).

Comment 17: Model Matching Program.

Yieh Hsing argues that the Department should modify its SAS program to correctly match Yieh Hsing's U.S. sales with home market sales. Yieh Hsing claims that the SAS program that the Department used for the preliminary determination, by comparing the absolute values of the control numbers, would result in improper matches of the most similar grades identified in Yieh Hsing's March 31, 1998 submission.

The petitioners argue that the Department should continue to use the model-match program from the preliminary margin calculation. The petitioners state that this program accurately identified the most similar grades based on the comparison of the absolute values of the control numbers, and this program is more accurate than Yieh Hsing's reported most similar models.

DOC Position

We agree in part with both the respondent and the petitioners. In the preliminary determination, the model-match program correctly identified matches of identical grades by comparing the absolute values of the control numbers. In cases where no matches of identical grades existed, we inserted language into the model-match program to correctly identify the most similar grades based on Yieh Hsing's reported most similar grades. For the final determination, we have continued to use this program, and have made any necessary modifications to ensure that this program correctly identifies the most similar grades as reported by Yieh Hsing in its March 31, 1998 submission, and clarified in its June 8, 1998 case brief.

Comment 18: Classification of Sales as EP or CEP.

Yieh Hsing argues that the Department incorrectly determined in the preliminary determination that Yieh Hsing's sales to one of its U.S. customers were CEP sales. Yieh Hsing claims that the Department, in reclassifying these sales as CEP sales, incorrectly determined that Yieh Hsing's sales agent acted as more than a "processor of sales-related documentation" and a "communication link" with this customer. Yieh Hsing notes that it explained in its March 31, 1998 submission (submitted after the preliminary determination) that its sales agent refaxed messages received from Yieh Hsing to this customer, and that the sales agent was not required to, and did not, make any sales promotion efforts during the POI. Yieh Hsing argues that a letter examined by the Department at verification shows that its U.S. sales agent acted as a communication link between Yieh Hsing and this customer, and shows that the sales agent did not negotiate sale terms. Citing to the Department's verification report, Yieh Hsing also argues that the Department verified that Yieh Hsing correctly explained its sales agent's role in its March 31, 1998 submission.

Yieh Hsing further claims that the Department improperly cited Yieh Hsing's January 13, 1998 submission for the conclusion that Yieh Hsing's U.S. sales agent performed various selling functions on behalf of Yieh Hsing. Yieh Hsing states that it reported that its sales agent acted on behalf of Yieh Hsing to distinguish the sales agent from working on behalf of Yieh Hsing's customer. Yieh Hsing also states that it reported that it gave a quotation to the sales agent because Yieh Hsing communicated with its customer through the sales agent. Yieh Hsing states that it never stated that the sales agent negotiated sales terms with the customer, or that it instructed its sales agent to solicit customers on its behalf.

The petitioners argue that the Department properly concluded that Yieh Hsing's sales to this U.S. customer meet the statutory definition of CEP sales. The petitioners further argue that the Department's preliminary conclusion is further supported by documents found at verification. The petitioners state that a letter examined by the Department at verification (also referred to by Yieh Hsing) demonstrates that Yieh Hsing's sales agent negotiates price and seeks out customers on its own, and thus is more than a "paper-pusher" and a "communications link" between Yieh Hsing and Yieh Hsing's customer.

DOC Position

We agree with the respondent that its U.S. sales to this customer should be treated as EP sales. In the preliminary determination, in order to determine whether sales made prior to importation through Yieh Hsing's sales agent in the United States were EP or CEP transactions, we analyzed whether Yieh Hsing's U.S. sales to this customer met the Department's three criteria for EP sales: (1) whether the merchandise in question is shipped directly from the manufacturer to the unaffiliated buyer without being introduced into the physical inventory of the selling agent; (2) whether direct shipment from the manufacturer to the unaffiliated buyer is the customary channel for sales of the subject merchandise between the parties involved; and (3) whether the selling agent in the United States acts only as a processor of sales-related documentation and a communication link with the unaffiliated U.S. buyer.

Based on the information on the record at the time of the preliminary determination, we determined that Yieh Hsing's U.S. sales to this customer during the POI met the first two of the Department's three criteria for EP sales. We further determined that Yieh Hsing's U.S. sales to this customer did not meet the Department's third criterion for EP sales since the reported sales-related responsibilities (including seeking out customers on its own and negotiating sales terms) of Yieh Hsing's sales agent in the United States demonstrated that the sales agent functioned as more than a "paper-pusher" in the U.S. sales process.

The record, as it has been developed since the preliminary determination, continues to show, and both parties do not contest, that Yieh Hsing's U.S. sales to this customer meet the first two criteria. In reexamining whether the third criterion (*i.e.,* whether the selling agent acts as more than a document processor), is satisfied, we considered whether the U.S. sales agent's involvement in making the sale is incidental or ancillary. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 63 FR 13170 (March 18, 1998). *See also Viscose Rayon Staple Fiber From Finland: Final Results of Antidumping Duty Administrative Review*, 63 FR 32820 (June 16, 1998).

The record now shows that Yieh Hsing's U.S. sales agent's role was incidental or ancillary in making the sales to this customer during the POI. Yieh Hsing clarified in its March 31, 1998 response, and we verified, that the role of Yieh Hsing's sales agent in Yieh Hsing's sales to this customer during the POI mainly involved refaxing messages between Yieh Hsing and this customer, communicating Yieh Hsing's price quotations to this customer, and assisting Yieh Hsing in handling U.S. Customs clearance of Yieh Hsing's merchandise. We also verified that all sales were initiated by this customer based on its production requirements. We further agree with the respondent that the letter examined at verification that is referenced by both the respondent and the petitioners shows that Yieh Hsing's U.S. sales agent acted as a communication link between Yieh Hsing and this customer, and that the sales agent did not negotiate sale terms. We also note that other letters examined at verification show the following: that Yieh Hsing and this customer communicated with each other through Yieh Hsing's U.S. sales agent; that Yieh Hsing, and not its agent, determined the terms of sale with this customer; and that Yieh Hsing, and not its agent, accepted or rejected all sales to this customer.

There is also no evidence that Yieh Hsing's U.S. sales agent otherwise had substantial involvement in the sales process. Based on these facts, we have concluded for purposes of the final determination that EP treatment is appropriate for all of Yieh Hsing's U.S. sales to this customer, as these sales were made by the producer, Yieh Hsing, prior to importation to a purchaser in the United States not affiliated with the producer (*see* section 772(a) of the Act). For further discussion, *see* Yieh Hsing Concurrence Memorandum.

Comment 19: The Classification of Sales to Another U.S. Customer.

The petitioners argue that the Department should treat Yieh Hsing's sales to another U.S. customer as CEP sales. The petitioners state that information obtained at verification shows that this customer holds inventory of Yieh Hsing's SSWR which the customer sells *after* it enters the United States. The petitioners further state that this customer, based on documents found at verification, is more than a ''paper pusher.''

Yieh Hsing contends that the Department should continue to treat Yieh Hsing's sales to this customer as EP sales. Yieh Hsing argues that the petitioners' arguments are based on a false presumption that this customer, a U.S. distributor, is a sales agent, and notes that it sold its SSWR to this customer, and not through this customer. Yieh Hsing further maintains that the petitioners' arguments are irrelevant to sales made to an unaffiliated U.S. distributor, since the Act defines EP sales as sales to an unaffiliated purchaser in the United States. Yieh Hsing also contends that this customer's status as a distributor is insufficient to conclude that Yieh Hsing and this customer are affiliated, and that the verified facts show that there is no close relationship between Yieh Hsing and this customer that would characterize them as affiliated parties.

DOC Position

We agree with the respondent. The main factors in analyzing whether U.S. sales are EP or CEP sales are whether they are first sold to an unaffiliated purchaser before or after importation, and if such sales are made before importation, whether such sales are made outside or in the United States. *See* sections 772(a) and 772(b) of the Act. In this case, the record indicates that the U.S. sales at issue were made prior to importation by Yieh Hsing in Taiwan to the unaffiliated U.S. purchaser. We also agree with Yieh Hsing that there is no evidence on the record to suggest that this customer was acting on Yieh Hsing's behalf or is affiliated with Yieh Hsing. Therefore, since Yieh Hsing sold SSWR to this unaffiliated U.S. customer before the date of importation, Yieh Hsing's sales to this customer meet the statutory criteria of EP sales. For further discussion, *see* Yieh Hsing Concurrence Memorandum.

Comment 20: Weight-Averaging of U.S. Prices.

Yieh Hsing argues that the Department should weight-average all U.S. prices of identical SSWR to calculate Yieh Hsing's dumping margin, rather than calculating dumping margins separately for EP and CEP sales, as the Department did for the preliminary determination. Yieh Hsing states that the Act and the Department's regulations do not permit the separate averaging of EP and CEP sales in calculating the weighted-average U.S. prices. Yieh Hsing further argues, citing the ''plain meaning'' rule, that the relevant sections of the Act and the regulations, which discuss comparing the weighted average of the normal values to the ''weighted average of the export prices and constructed export prices'' (emphasis added), should be interpreted as stated, and should not be interpreted as ''the weighted average of the export prices or constructed export prices.'' Yieh Hsing also contends that even though the Department rejected Yieh Hsing's ministerial error allegation on the same issue, the Department has not yet addressed whether the methodology used in the preliminary determination was legally correct.

The petitioners argue that the Department should calculate the final antidumping margin in the same manner as that done for the preliminary margin analysis. The petitioners note that the Department stated, in response to Yieh Hsing's comment on the same subject in Yieh Hsing's ministerial error allegation, that ''the Department followed its normal methodology to calculate Yieh Hsing's dumping margins in this investigation.'' The petitioners also note that the SAA and the Department's antidumping manual support the Department's position, as both specifically mention comparing the weighted average of the normal values with ''a weighted average of export prices or constructed export prices.''

DOC Position

Given that the Department has now classified all of Yieh Hsing's U.S. sales as EP sales, we need not make a determination on this issue. *See Comments 18 and 19* above for further discussion of the Department's classification of Yieh Hsing's U.S. sales.

Comment 21: Home Market Inventory Carrying Costs.

Yieh Hsing argues that the Department should include Yieh Hsing's reported home market inventory carrying costs in the dumping margin analysis in the final determination. Yieh Hsing notes that the Department did not include Yieh Hsing's reported home market inventory carrying costs in the calculations for the preliminary determination because the Department concluded that Yieh Hsing did not correctly calculate these costs. Yieh Hsing also notes that the Department verified the inventory carrying costs as reported in Yieh Hsing's March 31, 1998 submission.

DOC Position

We agree with the respondent. We verified that Yieh Hsing correctly calculated its inventory carrying costs in its March 31, 1998 submission. Therefore, we have included Yieh Hsing's reported inventory carrying costs in our final margin analysis, where appropriate.

Comment 22: Home Market Sales of Second-Quality Merchandise.

The petitioners argue that the Department should exclude sales of second quality merchandise from the home market database as was done in the preliminary margin analysis. The petitioners state that it is not appropriate to compare sales of non-prime quality or seconds in the home market to U.S. sales of prime quality merchandise.

DOC Position

We agree with the petitioners. In the preliminary determination, given the limited home market sales quantity of non-prime and defective merchandise and the fact that no such sales were made to the United States during the POI, we excluded sales of non-prime and defective merchandise from our analysis in accordance with our past practice. Since these facts have not changed from the preliminary determination, we have continued to exclude sales of non-prime and defective merchandise from our analysis in the final determination.

Comment 23: Corrections to the Response.

Yieh Hsing argues that the Department should incorporate the corrections to minor errors that Yieh Hsing submitted at verification in the calculations for the final determination. Yieh Hsing states that these corrections were timely submitted and verified by the Department.

The petitioners argue that the Department must incorporate all clerical errors discovered at verification in its final margin calculation. In particular, the petitioners note that the Department found at verification that Yieh Hsing incorrectly labeled its corrections submitted at verification for U.S. brokerage and letter of credit expenses.

DOC Position

We agree with both the respondent and the petitioners, and have made the appropriate corrections to all clerical errors that Yieh Hsing submitted and/or that we found at verification in our final calculations. *See* ''Export Price/Constructed Export Price'' and ''Normal Value'' sections of this notice.

Comment 24: Treatment of Costs of Billets Purchased from An Affiliate.

Yieh Hsing claims that the Department should not adjust its reported billet costs for purchases from its affiliated supplier to reflect an imported market price. According to Yieh Hsing, its reported affiliated supplier billet costs are based on the higher of COP, transfer price or market value, in accordance with section 773(f)(2) and (3) of the Act. Moreover, Yieh Hsing states that it appropriately used the price for physically comparable billets that its affiliate sold to non-affiliates as the market price for comparison purposes. The respondent emphasizes that the price it paid to non-affiliated suppliers for imported billets is not an appropriate basis to determine market price because the imported billets are of a higher quality, most do not require grinding, and the processing time they require is substantially less than those obtained from the affiliate. Yieh Hsing argues further that because it can demonstrate that the imported billets are qualitatively different, the Department should reject the petitioners' assertion that it rely on the market price of such raw material, as it did in the *Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil*, 62 Fed. Reg. 37869, 37874 (July 15, 1997).

If the Department finds it necessary to adjust its reported billet costs for purchases from its affiliated suppliers, Yieh Hsing argues that the Department should not use the same methodology that it used in the preliminary determination. According to Yieh Hsing, the preliminary adjustment incorrectly increased the billet cost for purchases from its non-affiliated suppliers which were already reported at a market price. In addition, Yieh Hsing claims that the Department distorted costs by not making the adjustment more grade-specific. Therefore, Yieh Hsing recommends that the Department calculate more accurate grade-specific adjustment factors and apply these factors to only the billet costs for purchases from its affiliated supplier. Yieh Hsing asserts that the Department has the necessary information to make these calculations and provided several examples of such calculations in its case brief.

The petitioners contend that the Department should adjust Yieh Hsing's reported billet cost to reflect the market price for billets by using the imported price. In determining the higher of COP, transfer price, and market value, the petitioners state that the Department should use the imported price when possible and, when no import price is available, it should use the higher of the affiliated supplier's revised COP, the transfer price to Yieh Hsing, or the affiliated supplier's sales price to unaffiliated parties. As for differences in physical characteristics, the petitioners maintain that the fact that Yieh Hsing grinds a higher percentage of billets purchased from its affiliate does not constitute a ''significant difference in product characteristics.'' Therefore, they conclude that imported billets are comparable merchandise.

DOC Position

We disagree with Yieh Hsing that its reported COP and CV amounts properly reflect the cost of billets consumed. Although Yieh Hsing provided the transfer prices, its affiliated supplier's cost of production, and market values for billets used to produce SSWR, it failed to use the higher of these three amounts in accordance with Section 773(f)(3) of the Act. Therefore, for the final results we have adjusted Yieh Hsing's cost of billets purchased from its affiliated supplier to reflect a market price.

As for which market price to use in making the adjustment, we agree with Yieh Hsing that the appropriate market price to use in our comparison is the price at which the company's affiliated supplier sold comparable billets to non-affiliates. In determining a market price for an input acquired from an affiliated supplier, the Department may rely on sales transactions for a comparable input between the affiliated supplier and an unaffiliated customer in the home market, or purchase transactions for a comparable input between an unaffiliated supplier and the respondent company. In this case, however, we do not consider it appropriate to rely on Yieh Hsing's purchases of billets from its non-affiliated suppliers as a market price because of the non-comparability of the billets. The imported billets Yieh Hsing purchased from non-affiliates are physically different from those obtained from the affiliate. For instance, Yieh Hsing receives the imported billet in such fashion that it does not require grinding. However, the billets purchased from its affiliated supplier require grinding. At verification, we confirmed that there were differences between the imported billets and those obtained from the affiliate supplier. On a sample basis we examined daily grinding reports, such as those contained in cost verification exhibit 28, which show that the imported billets did not require grinding, whereas the affiliate's billets required grinding.

As for making our billet cost adjustment for the final determination, we first computed a market price for those grades which have no market price (*i.e.*, those grades which Yieh Hsing's affiliated supplier did not sell to non-affiliates). We did this by calculating a weighted-average adjustment factor based on those grades that had a market price. On a grade-specific basis, we then used the higher of transfer price, market value, and revised COP for billets purchased from affiliated suppliers (*see Comment 25*) in accordance with section 773(f)(3) of the Act.

Comment 25: Adjustments to the COP of Billets from the Affiliate.

The petitioners state that the reported COP of the billets obtained from Yieh Hsing's affiliate needs to be adjusted to include an appropriate amount of G&A expenses, financing costs, and bonus payments. According to the petitioners, the method used by the affiliate to allocate these costs to its billets is not consistent with the Department's normal practice. Specifically, the petitioners claim that the affiliate allocated its G&A and interest expenses based on production tonnages. The petitioners, however, claim that the Department's normal practice is to allocate G&A and interest expense on a company-wide basis as a percentage of cost of sales. As for the bonus payments, the petitioners state that the affiliate excluded this cost from its calculation of the billet COP. According to the petitioners, these payments represent compensation to employees which should be included in the calculation of the billet COP.

Yieh Hsing asserts that recalculating its affiliate's COP for the alleged G&A and financing expense adjustments at issue would not affect the reported billet costs contained in the section D database. According to Yieh Hsing, these adjustments do not increase the affiliate's COP to be above the billet's reported transfer price. Thus, Yieh Hsing claims that adjusting the affiliate's COP is not necessary.

DOC Position

We agree with the petitioners that we should compute G&A and interest expenses on a company-wide basis as a percentage of cost of sales. In addition, we agree with the petitioners that the bonus payments represent compensation to employees that should be included in the billet COP. Accordingly, we adjusted the reported billet COP of Yieh Hsing's affiliate to include the revised G&A expense, revised financing costs, and bonus payments in order to properly compare the transfer price, market price and COP of billets purchased from affiliated suppliers in accordance with section 773(f)(3) of the Act (*see Comment 24*).

Comment 26: Adjustments to the Cost of Sales Figure.

The petitioners claim that the Department should adjust Yieh Hsing's cost of sales figure that was used to compute the G&A and interest expense rates in order to ensure it is on the same basis as the reported cost of manufacturing (COM) to which the rate is applied. Specifically, the petitioners state that the Department should reduce Yieh Hsing's cost of sales figure by the scrap revenue amount reported on its income statement. According to the petitioners, this adjustment is necessary to avoid the understatement of G&A and financing costs because the COM figure to which the G&A and interest expense rates are applied has been reduced by scrap revenue.

Yieh Hsing disagrees that such an adjustment is necessary because the resulting effect on its COP and CV is insignificant. Because of its insignificance, Yieh Hsing requests that the Department disregard the adjustment in accordance with section 777A(a)(2) of the Act. In addition, Yieh Hsing disagrees with the petitioners that its scrap sales revenue figure should reduce its cost of sales. Instead, the company recommends reducing its cost of sales figure by the manufacturing cost used to make the scrap it sold.

DOC Position

We agree with the petitioners that the cost of sales figure used to compute Yieh Hsing's G&A and interest expense rates should be reduced by the scrap revenue amount reported on its income statement. To calculate its reported G&A and financing expense ratios, Yieh Hsing used its cost of sales figure as reported on its audited financial statements. However, we note that this cost of sales figure is not on the same basis as the reported COM because the company offset its reported COM with the revenues it generated from the sale of scrap. Consistent with our findings in the *Final Determination of Sales at Less Than Fair Value of Certain Pasta From Italy,* 61 FR 30326, 30349 (June 14, 1996) and *Final Results of Antidumping Duty Administrative Review of Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea,* 62 FR18404, 18447 (April 15, 1997), we have reduced Yieh Hsing's cost of sales figure by its scrap revenue to obtain a cost of sales figure that is on the same basis as the reported COM. We then used this adjusted cost of sales amount to calculate revised G&A and financial expense ratios. Consequently, we disagree with Yieh Hsing that the correct method to adjust the cost of sales figure is to reduce its cost of sales by the cost of producing the scrap. We note that reducing its cost of sales figure by the cost of producing the scrap would be inconsistent with the method by which COM is calculated (*i.e.*, COM less scrap revenue). Furthermore, in accordance with section 777A(a)(2) of the Act, our normal practice is to make corrections when an error is significant in relation to the value of the merchandise.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of SSWR from Taiwan, except those produced/exported by Yieh Hsing Enterprise Corporation, Ltd., that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted average margin percentage
Walsin Cartech Specialty Steel Corporation	8.24
Yieh Hsing Enterprise Corporation, Ltd	.02
All Others	8.24

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded any *de minimis* margins from the calculation of the ''All Others Rate.''

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 777(i) of the Act.

Dated: July 20, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–20022 Filed 7–28–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Application may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 98–035. *Applicant:* Cornell University, 359 Bard Hall, Ithaca, NY 14853. *Instrument:* Scanning Tunneling Microscope, Model JAFM–4500XT. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for studies of crystalline and amorphous surfaces of insulating and semiconducting materials in an ultrahigh vacuum environment at room and elevated temperatures. Silicate glasses and their related crystalline forms are of particular interest. Investigations will be conducted to determine (a) the microscopic surface structure, (b) the surface chemical variations, (c) how the interactions between surface constituents influence changes in the structure and chemistry when the surface is processed and (d) how the tunneling electron current is influenced by subjecting the surface to electron and photon beams.

Application accepted by Commissioner of Customs: July 15, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–20266 Filed 7–28–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Membership Opportunity—U.S.-Turkey Business Development Council

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: As part of its Big Emerging Market Strategy for Turkey, the Department of Commerce has established a Business Development Council (BDC) in cooperation with the Turkish Government. The BDC has established eleven working groups: energy/environment, telecommunications, textiles, health, education, defense, finance, agriculture, tourism, transportation, and media. The Department of Commerce is currently seeking nominations of outstanding individuals to fill existing vacancies on the U.S. section of the BDC in the tourism and textiles sectors. The Department of Commerce is also accepting applications for review for additional U.S. members on the other BDC working groups. The purpose of the BDC is to provide a forum through which U.S. and Turkish private sector representatives can engage in constructive exchanges of information on commercial matters, and in which governments can exchange information, solve problems, and work more effectively on issues of mutual concern relating to the following:

—Identifying commercial opportunities, and impediments and issues of concern to the U.S. and Turkish business communities;
—Addressing obstacles to trade and investment;
—Improving the dissemination of information on U.S.-Turkey market opportunities;
—Implementing trade/business development and promotion programs, including trade missions, exhibits, seminars, and other events; and
—Identifying further steps to facilitate and encourage the development of commercial expansion and cooperation between the two countries.

The inaugural meeting of the BDC was held in Ankara, Turkey in January 1998 with government and private sector members from both countries in attendance. A follow-up session was held in May 1998 in Istanbul, Turkey with an upcoming meeting expected to take place in Washington, DC in the fall of 1998.

Obligations: Private sector members are appointed for a two year term and serve at the discretion of the Secretary of Commerce and as representatives of the U.S. business community. They are expected to participate fully in defining the agenda for the BDC and in implementing its work program. They are fully responsible for travel, living and personal expenses associated with their participation, and may be responsible for a pro rata share of administrative and communications costs of the Council.

Criteria: The Council is composed of two sections, the U.S. section and the Turkish section. The U.S. section is chaired by the Under Secretary for International Trade of the Department of Commerce and includes 23 members from the U.S. private sector.

In order to be eligible for membership in the U.S. section, potential candidates must be:

—U.S. citizens or permanent U.S. residents;
—CEOs or other senior management level employees of a U.S. company or organization involved in trade with and/or investment in Turkey; and
— Not a registered foreign agent under the Foreign Agent Registration Act of 1938, as amended (FARA).

In reviewing eligible candidates, the Department of Commerce will consider such selection factors as:

—Depth of experience in the Turkish market;
—Export/investment experience;
—Industry or service sector represented;
—Company size or, if an organization, size and number of member companies;
—Contribution to diversity based on company size, location, demographics, and traditional under representation in business; and
—Stated commitment to actively participate in BDC activities and meetings.

To be considered for membership, please provide the following: name and title of individual proposed for consideration; name and address of organization or company sponsoring each individual; company or organization's product or service line; size of the company or, if an organization, the size and number of member companies; export/foreign investment experience; a brief statement (not more than 2 pages) of why each candidate should be considered for membership on the Council; the particular segment of business community each candidate would represent; and a personal resume.

DATES: In order to receive full consideration, requests must be received no later than Monday, August 31, 1998.

ADDRESSES: Please send your requests for consideration to Mr. David De Falco, International Trade Specialist, Office of European Union and Regional Affairs, by fax on 202/482–2897 or by mail at Room 3036, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. David De Falco of the Office of

European Union and Regional Affairs, Room 3036, U.S. Department of Commerce, Washington, DC 20230; telephone: 202/482–2178.

Authority: Act of February 14, 1903, c. 552, as amended, 15 U.S.C. 1501 et seq, 32 Stat. 825; Reorganization Plan No. 3 of 1979, 19 U.S.C. 2171 Note, 93 Stat. 1381.

Dated: July 23, 1998.

Patrick A. Mulloy,

Assistant Secretary, Market Access and Compliance, International Trade Administration.

[FR Doc. 98–20230 Filed 7–28–98; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–821]

Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy

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

EFFECTIVE DATE: July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Lockard or Eric B. Greynolds, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain stainless steel wire rod from Italy: Cogne Acciai Speciali S.r.l., Acciaierie Valbruna S.r.l., and Acciaierie di Bolzano S.p.A. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

Case History

Since the publication of our preliminary determination in this investigation on January 7, 1998 (63 FR 809), the following events have occurred:

On January 21, 1998, and March 4, 1998, we issued supplemental questionnaires to the Commission of the European Union (EU), Government of Italy (GOI), Cogne Acciai Speciali S.r.l. (CAS), and Acciaierie Valbruna S.r.l. (Valbruna) and Acciaierie di Bolzano S.p.A. (Bolzano), (collectively referred to as Valbruna/Bolzano). We received responses to these supplemental questionnaires between February 9, 1998, and March 27, 1998. Respondents submitted additional information on April 9, 1998.

On March 5, 1998, the final determinations in the antidumping and countervailing duty investigations were postponed until July 20, 1998 (63 FR 10831). We conducted verification of the countervailing duty questionnaire responses from April 15 through May 13, 1998. On May 7, 1998, we terminated the suspension of liquidation of all entries of the subject merchandise entered or withdrawn from warehouse for consumption on or after that date. Petitioners and Respondents filed case briefs on June 11, 1998, and rebuttal briefs on June 16, 1998.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR 351 and published in the **Federal Register** on May 19, 1997 (62 FR 27295).

Petitioners

The petition in this investigation was filed by AL Tech Specialty Steel Corp.; Carpenter Technology Corp.; Republic Engineered Steels; Talley Metals Technology, Inc.; and, United Steelworkers of America, AFL-CIO/CLC (the Petitioners).

Scope of Investigation

For purposes of this investigation, certain stainless steel wire rod (SSWR or subject merchandise) comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/ or descaling, and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter. Two stainless steel grades SF20T and K–M35FL are excluded from the scope of the investigation. The percentages of chemical makeup for the excluded grades are as follows:

SF20T

Carbon	0.05 max
Manganese	2.00 max
Phosphorous	0.05 max
Sulfur	0.15 max
Silicon	1.00 max
Chromium	19.00/21.00
Molybdenum	1.50/2.50
Lead	added (0.10/0.30)
Tellurium	added (0.03 min)

K–M35FL

Carbon	0.015 max
Silicon	0.70/1.00
Manganese	0.40 max
Phosphorous	0.04 max
Sulfur	0.03 max
Nickel	0.30 max
Chromium	12.50/14.00
Lead	0.10/0.30
Aluminum	0.20/0.35

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Injury Test

Because Italy 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 Italy materially injure, or threaten material injury to, a U.S. industry. On September 24, 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 Italy of the subject merchandise (62 FR 49994).

Period of Investigation

The period for which we are measuring subsidies (the ''POI'') is calendar year 1996.

Corporate Histories

CAS

From 1984 to 1987, the subject merchandise was produced at the Aosta facilities operating under Deltasider, a wholly-owned subsidiary of Finsider S.p.A. (Finsider), the GOI-owned holding company for steel producers. Finsider was, in turn, wholly-owned by Instituto per la Ricostruzione Industriale (IRI) an agency of the GOI. In 1987, the GOI reorganized the Finsider corporate groupings and created Deltacogne S.p.A., as a subsidiary to Deltasider. The Aosta operations were transferred to Deltacogne S.p.A.

In 1988, IRI created ILVA S.p.A. as the successor to Finsider; ILVA was also wholly-owned by the IRI of the GOI, and was created to act as both an operating company and a holding company for the government-owned steel production operations. In 1989, Deltacogne S.p.A., the producer of SSWR, was merged into ILVA S.p.A. In December 1989, the GOI again reorganized its steel producing subsidiaries and created Cogne S.r.l., a wholly-owned subsidiary of the ILVA Group, which held the Aosta operations. Cogne S.r.l. was later named Cogne Acciai Speciali S.p.A. (Cogne S.p.A.). From 1990 to 1992, Gruppo Falck S.p.A. (Falck), a private company with holdings in steel and real estate, held 22.4 percent of Cogne S.p.A.''s stock (with the remaining and controlling interest held by ILVA). Falck acquired the shares of Cogne S.p.A. by exchanging an equal value of shares of its own subsidiary, Bolzano. By the end of 1992, Falck's interest in Cogne S.p.A. was dissolved by losses and Cogne S.p.A. was again wholly-owned by the ILVA Group.

In 1991, Robles S.r.l., a subsidiary of ILVA Gestioni Patrimoniali (ILVA GP), another ILVA subsidiary, acquired the land and buildings, *i.e.*, the non-productive assets, of the Aosta facilities from Cogne S.p.A. Robles S.r.l. was then acquired by Compagnie Monegasque de Banque S.A. at the end of 1991. In 1992, Robles was reacquired by ILVA GP according to the terms of its original sales contract (which required ILVA GP to repurchase Robles if at the end of one year the new owners had failed to sell the Aosta land and buildings). Cogne S.p.A. then acquired the shares of Robles from ILVA GP. The name of Robles S.r.l. was then changed to Cogne Acciai Speciali S.r.l. (CAS).

At this time, the GOI decided to privatize the Cogne operations. At the end of 1992, the assets and some of the liabilities of Cogne S.p.A. were assessed and contributed to CAS on December 31, 1992, in exchange for shares equal to the net value of the capital contribution, 40 billion lire. From that date, CAS assumed the on-going operations of the Cogne facility and Cogne S.p.A. entered into liquidation and became Cogne S.p.A. in Liquidazione. The GOI offered CAS for sale through an open bidding process. Three parties submitted complete offers for CAS. The bid of GE. VAL. S.r.l., a privately-owned holding company, was accepted by Cogne S.p.A. in Liquidazione. The CAS shares were transferred to GE. VAL. based on two installment payments, one on the date of the agreement (December 31, 1993) and one 18 months later. At the end of 1995, Cogne S.p.A. in Liquidazione was merged into ILVA S.p.A. in Liquidazione, which was subsequently merged into IRITECNA, another IRI company in liquidation. In 1995, GE. VAL. S.r.l. was merged into MEG S.A., another holding company of the same corporate family. Since that time, CAS has been owned and controlled by MEG S.A.

Bolzano and Valbruna

From 1985 through 1990, Bolzano was a wholly-owned subsidiary of Acciaierie e Ferriere Lomarde Falck, the main industrial company of Falck which was a private corporate group with holdings in steel, real estate, environmental technologies, and other sectors. In 1990, ILVA acquired 44.8 percent of the stock in Bolzano. ILVA acquired the shares of Bolzano by exchanging an equal value of shares of its own subsidiary Cogne S.p.A. ILVA also acquired shares in other Gruppo Falck steel companies. In 1993, ILVA's interest in Bolzano was completely dissolved because of losses, and Falck again held virtually all of the shares in Bolzano. Falck decided to sell Bolzano based on its company-wide strategic decision to withdraw from the steel sector. Falck contacted Valbruna as a potential buyer in late 1994. Subsequently, the parties entered into negotiations for the transfer of Bolzano. Each party had an independent evaluation done of the value of the firm. A third study was done to reconcile the points of the first valuations that were in dispute relating to the final net equity and cash flow of Bolzano for purposes of finalizing the purchase price. Valbruna acquired 99.99 percent of the shares of Bolzano for this final price on August 31, 1995. Since then, the two companies have issued consolidated financial statements.

Affiliated Parties

In the present investigation, there are affiliated parties (within the meaning of section 771(33) of the Act) whose relationship may be sufficient to warrant treatment as a single company. In the countervailing duty questionnaire, consistent with our past practice, the Department defined companies as related where one company owns 20 percent or more of the other company, or where companies prepare consolidated financial statements. *See Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy*, 61 FR 30287 (June 14, 1996) (*Pasta from Italy*). Valbruna owns 99.99 percent of Bolzano. In the preliminary determination, we treated Valbruna and Bolzano as a single company. Our review of the record and our findings at verification have not led us to reconsider this determination. Therefore, we have calculated a single countervailing duty rate for these companies by dividing their combined subsidy benefits by their consolidated total sales, or consolidated export sales, as appropriate.

Change in Ownership

In the 1993 investigations of Certain Steel Products, we developed a methodology with respect to the treatment of non-recurring subsidies received prior to the sale of a company. *See Final Countervailing Duty Determination; Certain Steel Products from Austria, et. al.*, 58 FR 37217 (July 9, 1993) (*Certain Steel from Austria*). This methodology was set forth in the *General Issues Appendix* (*GIA*), attached to that notice. The methodology was subsequently upheld by the Court of Appeals for the Federal Circuit. *See Saarstahl AG* versus *United States*, 78 F.3d 1539 (Fed. Cir. 1996); *British Steel plc* versus *United States*, 127 F.3d 1471 (Fed. Cir. 1997).

Under the *GIA* methodology, we estimate the portion of the company's purchase price which is attributable to prior subsidies. To make this estimate, we divide the face value of the company's subsidies by the company's net worth for each of the years corresponding to the company's allocation period. We then take the simple average of these ratios, which serves as a reasonable surrogate for the percentage that subsidies constitute of the overall value, *i.e.*, net worth, of the company. Next, we multiply this average ratio by the purchase price of the company to derive the portion of the purchase price that we estimate to be a repayment of prior subsidies. Then, the benefit streams of the prior subsidies are reduced by the ratio of the repayment amount to the net present value of all remaining benefits at the time of the change in ownership.

The methodology does not automatically treat all previously bestowed subsidies as passing through to the purchaser, nor does it automatically treat the subsidies as remaining with the seller or as being extinguished as a result of the transaction. Instead the methodology recognizes that a change in ownership has some impact on previously bestowed subsidies and, through an analysis based on the facts of each transaction, determines the extent to which the subsidies pass through.

In the URAA, Congress clarified how the Department should approach changes in ownership. Section 771(5)(F) of the Act states that:

> A change in ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not by itself require a determination by the administrating authority that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction.

The Statement of Administrative Action accompanying the URAA, reprinted in H.R. Doc. No. 103–316 (1994) (SAA) explains why Section 771(5)(F) was added to the statute. The SAA at page 928 states:

> Section 771(5)(F) is being added to clarify that the sale of a firm at arm's length does not automatically, and in all cases, extinguish any prior subsidies conferred. Absent this clarification, some might argue that all that would be required to eliminate any countervailing duty liability would be to sell subsidized productive assets to an unrelated party. Consequently, it is imperative that the implementing bill correct such an extreme interpretation.

Consistent with the URAA and the SAA, the Department continues to examine whether non-recurring subsidies benefit a company's production after a change in ownership, even one accomplished at arm's length. Accordingly, we continue to follow the methodology developed in the *GIA* based on our determination that this methodology does not conflict with the change in ownership provision of the URAA. As stated by the Department, ''[t]he URAA is not inconsistent with and does not overturn the Department's General Issues Appendix Methodology. * * *'' *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review,* 61 FR 58377, 58379 (Nov. 14, 1996) (*UK Lead Bar 94*). We further clarified in *UK Lead Bar 94* that, ''[t]he language of Sec. 771(5)(F) of the Act purposely leaves discretion to the Department with regard to the impact of a change in ownership on the countervailability of past subsidies.'' *Id.* at 58379. The Department has been applying the methodology set forth in the *GIA. See, e.g., Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Trinidad and Tobago,* 62 FR 55003 (October 22, 1997) (*Steel Wire Rod from Trinidad and Tobago*) and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Canada,* 62 FR 54972 (October 22, 1997) (*Steel Wire Rod from Canada*). CAS and Valbruna/Bolzano claim that, because the changes in ownership occurred through arm's length transactions, the previously bestowed subsidies were extinguished. However, for reasons discussed below (see *the Department's Position* on *Comments 5 and 9 through 13*), we find that application of the *GIA* methodology is appropriate.

CAS

To calculate the amount of the previously bestowed subsidies that passed through to CAS, we followed the *GIA* methodology described above. We were unable to calculate the subsidies-to-net worth ratios used in the privatization calculation for 1985 and 1986, because the net worth information was not available for the Aosta operations alone. Therefore, in accordance with section 776 of the Act, as facts available, we used an average of the years available (1987 through 1992) in the privatization calculation. As described in the ''Corporate Histories'' section above, ILVA ceased operations following the privatization and/or liquidation of all of its subsidiaries, operating units, and divisions. For untied non-recurring subsidies provided to ILVA (and prior to 1989, ILVA's predecessor, Finsider), Cogne's former parent company, we calculated the amount of these untied subsidies attributable to Cogne by applying a ratio of the Aosta operation's assets to its parent company's assets in the year of receipt of the subsidy. When calculating the subsidies to net worth ratios used in the privatization methodology described above, we included Cogne's share of the untied subsidies in the calculation.

As discussed in the ''Corporate Histories'' section above, from 1990–1993, ILVA held a minority interest in Bolzano and Falck held a minority interest in Cogne. However, as examined previously by the Department, the exchange of shares involved no cash transactions. *See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy,* 58 FR 37327 (July 9, 1993) (*Certain Steel from Italy*). Moreover, the Cogne and Bolzano share exchange involved an equal value of shares in each company. At verification we were able to confirm this finding with respect to Cogne and Bolzano. *See* Verification Report of Cogne Acciai Speciali S.r.l. (CAS), dated June 1, 1998, public version on file in the Central Records Unit (CRU), room B–099 of the main Commerce building (CAS Verification Report) and Verification Report of Acciaierie di Bolzano Sp.A. and Acciaierie Valbruna S.r.l., dated June 1, 1998, public version on file in the CRU (Valbruna/Bolzano Verification Report). There were no cash or other asset contributions involved in this stock swap. Therefore, we did not attribute any portion of ILVA's untied subsidies to Bolzano or Falck's untied subsidies to CAS.

Bolzano

To calculate the amount of the previously bestowed subsidies that passed through to Bolzano from Falck, we followed the *GIA* methodology which the Department has previously determined is applicable to private-to-private changes in ownership to examine the reallocation of subsidies. *See, e.g., Pasta from Italy.* When Falck sold Bolzano to Valbruna in 1995, Falck was in the process of transferring or closing all of its steel operations. For untied non-recurring subsidies provided to Falck in the years prior to Bolzano's sale to Valbruna, we calculated the amount of these untied subsidies attributable to Bolzano by applying a ratio of Bolzano's assets to Falck's assets in the year of receipt of the subsidy. When calculating the subsidy to net worth ratios used in the methodology described above, we included Bolzano's share of the untied subsidies in the calculation. Also, as described above, we have not attributed any portion of ILVA's untied subsidies to Bolzano during the period in which ILVA held a minority interest in Bolzano.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: In our preliminary determination, we used as our benchmark the average long-term interest rate available in Italy based upon a survey of 114 Italian banks reported by the Banca D'Italia, the Central Bank of Italy. However, during verification, we learned that the Italian Interbank Rate (ABI) is the most suitable benchmark for long-term financing to Italian companies. Because the ABI represents a long-term interest rate provided to a bank's most preferred customers with established low-risk credit histories, for other customers commercial banks typically add a spread ranging from 0.55 percent to 4 percent onto the rate depending on the company's financial health. In years in which the companies under investigation were creditworthy, we added the average of that spread onto the ABI to calculate a benchmark. In years in which the companies under investigation were uncreditworthy, we calculated the discount rates according to the methodology described in the *GIA*. Specifically, we added to the ABI a spread of 4 percent in order to reflect the highest commercial interest rate available to companies in Italy. We then added to this rate a risk premium equal to 12 percent of the ABI, the equivalent of a prime rate.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies. *See GIA*, 58 FR at 37227. However, in *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States*, 929 F. Supp. 426, 439 (CIT 1996) (*British Steel II*). Thus, we intend to determine the allocation period for non-recurring subsidies using company-specific AUL data where reasonable and practicable. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16551 (April 7, 1997).

In this investigation, the Department has followed the Court's decision in *British Steel*, and examined information submitted by the Respondent companies as to their average useful life of assets.

Valbruna/Bolzano: In the preliminary determination, we calculated a single weighted-average AUL for Valbruna and Bolzano. We received no comments on this calculation and our review of the record has not led us to reconsider this finding. Therefore, the AUL for Valbruna/Bolzano is 12 years.

CAS: In the preliminary determination, we did not calculate an AUL based on CAS's financial information because the calculation provided by the company included several distortions related to the asset valuation methodologies employed by the company and its use of accelerated depreciation. Instead, in the preliminary determination, we used the AUL calculated for Valbruna/Bolzano as the most appropriate surrogate for CAS's AUL. CAS did not present any additional information on its AUL calculation for our consideration for the final determination.

In the preliminary determination, we discussed the GOI's tax depreciation schedule for the steel sector in Italy as a possible surrogate AUL for CAS. According to the GOI, the depreciation schedule was based on information acquired from an industry survey conducted in 1988. We asked the GOI to provide the survey so we could determine whether the depreciation schedule reflected the average useful life of assets in the Italian steel industry. The GOI did not submit this survey. Therefore, we are unable to determine whether the schedule represents the AUL of assets in the Italian steel industry. As such, we are continuing to use the Valbruna/Bolzano AUL of 12 years as a surrogate for a CAS AUL for this final determination.

Equityworthiness

In analyzing whether a company is equityworthy, the Department considers whether that company could have attracted investment capital from a reasonable private investor in the year of the government equity infusions, based on information available at that time. *See GIA*, 58 FR at 37244.

Our review of the record and our analysis of the comments submitted (see Comment Section below) have not led us to change our finding in the preliminary determination. Based on the Department's determination in *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy*, 59 FR 18357 (April 18, 1994), (*Electrical Steel from Italy*), we continue to find ILVA's predecessors and ILVA unequityworthy from 1985 through 1988 and from 1991 through 1992.

In measuring the benefit from a government equity infusion into an unequityworthy company, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists. In this case, a market benchmark does not exist so we used the methodology described in the *GIA*, 58 FR at 37239. *See also Steel Wire Rod from Trinidad and Tobago*, 62 FR at 55004. Following this methodology, equity infusions made on terms inconsistent with the usual practice of a private investor are treated as grants. Use of this methodology is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the information available in that year.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993) (*Certain Steel from France*); *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014 (Oct. 21, 1997).

ILVA's predecessors and ILVA were found to be uncreditworthy from 1985 through 1992 in *Electrical Steel from Italy*; no new information has been presented in this investigation that would lead us to reconsider this finding. Therefore, consistent with our past practice, we continue to find ILVA's predecessors and ILVA uncreditworthy from 1985 through 1992. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil*, 58 FR 37295, 37297 (July 9, 1993). Our examination of the financial data and ratios from 1990, 1991, and 1992 has led us to determine that ILVA was also uncreditworthy in 1993. We did not examine CAS's creditworthiness in 1994 and 1995 because the company did not receive equity infusions, grants, long-term loans, or loan guarantees in the years. Based on our examination of the financial performance of CAS in 1993, 1994, and 1995, and our analysis of its financial ratios, we continue to find CAS creditworthy in 1996.

With respect to Falck and Bolzano, we have examined the creditworthiness of Falck in 1992 since one of the loans was renegotiated in that year. To determine Falck's creditworthiness in 1992, we examined financial statistics for the prior three years. Falck's financial ratios showed that the company was able to cover its obligations. Further, Falck's debt-to-equity position was strong. Therefore, we determine that Falck was creditworthy in 1992.

Neither Falck nor Bolzano received any equity infusions, long-term loans, or loan guarantees in the other years in which the companies were alleged to be uncreditworthy. Therefore, we have not examined the creditworthiness of Falck in the years 1993–1994 nor of Bolzano in the years 1995–1996.

I. Programs Determined To Be Countervailable

Programs of the Government of Italy

A. Equity Infusions to Finsider and ILVA

The GOI, through IRI, provided equity infusions to Finsider in 1985 and 1986. IRI also provided equity infusions to ILVA in 1991 and 1992. We determine that these equity infusions provide a financial contribution that confer a benefit under section 771(5)(E)(i) of the Act, in the amount of each infusion because the GOI investments were not consistent with the usual investment practices of private investors (*see* discussion of ''Equityworthiness'' above). These equity infusions are specific within the meaning of section 771(5A)(D) of the Act because they were limited to Finsider and ILVA. Accordingly, we find that the equity infusions to Finsider and ILVA are countervailable subsidies within the meaning of section 771(5) of the Act.

We have treated these equity infusions as non-recurring grants given in the year the infusion was received because each required a separate authorization. As discussed below in the *Department's Position* on *Comment 10,* consistent with the Department's past practice, we consider these equity infusions to be untied subsidies, which benefit all the production of Finsider and ILVA, respectively, including the production of their subsidiaries. *See, e.g., Steel Wire Rod from Canada* 62 FR at 54977–79. Because both Finsider and ILVA were uncreditworthy in the year of receipt, we applied a discount rate that included a risk premium. Since CAS has been privatized, we followed the methodology described in the ''Change in Ownership'' section above to determine the amount of each equity infusion appropriately allocated to CAS after the privatization. We then divided the benefit allocated to the POI by CAS's total sales. Accordingly, we determine the countervailable subsidy to be 6.97 percent ad valorem for CAS.

B. Pre-Privatization Assistance and Debt Forgiveness

As explained in the ''Corporate Histories'' section above, Cogne S.p.A. acquired the shares of Robles S.r.l. and changed the company's name to Cogne Acciai Speciali S.r.l. (CAS), in 1992. The purpose of acquiring the company was to prepare for the privatization of the Aosta factory. In the preliminary determination, we countervailed debt forgiveness provided in connection with the privatization of CAS. Based on the information collected after the preliminary determination, and comments submitted by the parties, we have modified our approach to this program, in part.

At the end of 1992, Cogne S.p.A. transferred most of the productive assets of the Aosta facility to CAS through the capital contribution procedure under Italian law. Under this procedure, Cogne S.p.A. had assets (and liabilities) assessed under the oversight of the Italian Court and contributed them to CAS in exchange for shares in CAS worth exactly the net value of the contribution. CAS officials explained that pursuant to the capital contribution, CAS received the liabilities associated with the production process, while Cogne S.p.A. retained the other liabilities which were mostly long-term. From that point, CAS became the operating company and Cogne S.p.A. entered into liquidation. Cogne S.p.A. retained some of the inventories, and minor productive assets. CAS acquired the retained inventories and assets that Cogne S.p.A. did not sell to third parties for their book value of 122 billion lire. Cogne S.p.A. also retained part of the workforce on its payroll. On December 30, 1993, Cogne S.p.A. bought the land and buildings from CAS for the book value of 79.6 billion lire. Cogne S.p.A. then sold the land and buildings to the Regional Government in 1994 (see ''Valle d'Aosta Regional Assistance Associated with the Sale of CAS'' below).

CAS was offered for sale pursuant to an open bidding process designed to obtain the best purchase price for the company. Negotiations for the sale progressed through 1993; GE. VAL. S.r.l.'s final offer was accepted, and CAS was privatized effective January 1, 1994. As of December 31, 1993, ILVA S.p.A. issued a guarantee on behalf of Cogne S.p.A. for the uncovered liabilities of the firm, and the anticipated costs of the liquidation process, for 380 billion lire.

CAS was the first of the ILVA Group companies to be privatized. The plans for the privatization preceded the formal liquidation plans approved by the EU in the Commission's Decision of April 12, 1994, 94/259/ECSC. That plan divided ILVA into three companies: ILVA Laminati Piani, Acciai Speciali Terni, and ILVA in Liquidazione. The first two companies, which included the primary production activities of ILVA S.p.A., were eventually privatized. The latter company, ILVA in Liquidazione, retained responsibility for all of the ILVA entities which could not be sold to private parties. The EU approved some 10 trillion lire of state aid connected with the liquidation of ILVA in Liquidazione and its subsidiaries. The estimated costs of the liquidation, 10 trillion lire, covered all of the ILVA companies including the subsidiaries. The costs associated with the liquidation of Cogne S.p.A. were included in that total. *See* Verification Report of the Government of Italy dated June 1, 1998, public document on file in the CRU (GOI Verification Report).

In the preliminary determination, we examined the individual costs associated with the liquidation of Cogne S.p.A., instead of focusing on the total costs associated with privatization of the entire ILVA Group, because of the complexity of this series of transactions. Thus, we calculated the benefit of the debt coverage by subtracting the book value of the land and buildings (that were sold to the Region within the next year) from the total liabilities on Cogne S.p.A.'s books on December 31, 1993. We followed this methodology in the preliminary determination because it was clear that the company was able to recover the value of the land and buildings, and we were unsure as to what other assets on Cogne S.p.A.'s books could be recovered. CAS argued that this methodology overstated the true amount of any debt coverage because other assets were, in fact, used to offset liabilities (*see Comment 11,* below). At verification, it was established that the amount of Cogne S.p.A. debt for which ILVA bore responsibility as of December 31, 1993, was 253 billion lire, as evidenced by ILVA in Liquidazione's 1993 balance sheet. That figure includes the total net liabilities of Cogne S.p.A. as of December 31, 1993, plus the provisions for risks, and other costs associated with the liquidation of the company. Thus, we determine that CAS received 253 billion lire of debt coverage and assumption of losses in conjunction with its privatization.

The pre-privatization benefits are specific under section 771(5A)(D) of the Act because they were provided to CAS, in connection with the full package provided exclusively to the state-owned steel industry. With these pre-privatization benefits, the GOI through ILVA, made a financial contribution under section 771(5)(D) that benefits the recipient in the amount of the total liabilities and losses assumed. To calculate the benefit, we treated the debt assumption as a grant to CAS received in 1993. The grant is non-recurring because the pre-privatization assistance was a one-time, extraordinary event. We allocated the benefit over twelve years, applied a risk premium because the company was uncreditworthy in the year of receipt, and followed the methodology described in the ''Change in Ownership'' section above. We then divided the benefit in the POI by CAS's total sales. On this basis, we determine the countervailable subsidy to be 14.77 percent *ad valorem* for CAS.

C. Capacity Reduction Payments Under Law 193/1984

Among the benefits provided by Law 193/1984 were payments to companies in the private steel sector which achieved capacity reductions consistent with an agreement by the European Coal and Steel Community (ECSC). The Department previously found that this program provides countervailable subsidies in the form of non-recurring grants to the private steel sector. *See Certain Steel from Italy*, 58 FR at 37332–33. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Valbruna and Falck received payments for capacity reduction in 1985 and 1986 under Articles 2 and 4 of Law 193/1984. Article 2 grants covered ECSC steel production while Article 4 grants covered non-ECSC pipe and tube production.

In our preliminary determination, we countervailed all closure aid received by Valbruna. In the case of Falck, we did not countervail assistance the company received under Article 4 in connection with its pipe facility because in *Certain Steel from Italy*, the Department determined that these grants were for restructuring of the pipe facility.

However, at verification, GOI officials explained that the grants Falck received under Article 4 were for the closure of its pipe facility. As explained in the *GIA*, the Department considers grants provided to shutdown part of a company's operations to benefit all remaining production. *GIA*, 58 FR at 37270, citing *British Steel Corp.* v. *United States*, 605 F. Supp. 286 (CIT 1985). *See also Steel Wire Rod from Canada*, 62 FR at 54980. Therefore, we find all closure assistance provided to Valbruna and Falck under Articles 2 and 4 of Law 193/1984 to be countervailable subsidies under section 771(5) of the Act.

To calculate the benefit attributable to Valbruna/Bolzano during the POI from the grants to Falck, we first determined the amount of Falck's grants attributable to Bolzano at the time the grants were given, using the ratio of Bolzano's assets to Falck's assets. We then allocated this amount over Valbruna/Bolzano's AUL to determine the benefit in each year. Next, we determined the amount of the benefit which remained with Bolzano after Bolzano was acquired by Valbruna in 1995, consistent with the methodology described in the ''Change in Ownership'' section above. To calculate the benefit attributed to Valbruna/Bolzano from the grants Valbruna received, we allocated the grants over Valbruna/Bolzano's AUL to determine the benefit in each year. We then summed the benefit amounts attributable to the POI from Falck's and Valbruna's grants and divided the total benefit by Valbruna/Bolzano's total sales. On this basis, we determine the countervailable subsidy to be 0.14 percent *ad valorem* for Valbruna/ Bolzano.

D. Law 796/76 Exchange Rate Guarantees

Law 796/76 established a program to minimize the risk of exchange rate fluctuations on foreign currency loans. All firms that had contracted foreign currency loans from the ECSC or the Council of Europe Resettlement Fund (CER) could apply to the Ministry of the Treasury (MOT) to obtain an exchange rate guarantee. The MOT, through the Ufficio Italiano di Cambi (UIC), calculated loan payments based on the lira-foreign currency exchange rate in effect at the time the loan was approved. The program established a floor and ceiling for exchange rate fluctuations, limiting the maximum fluctuation a borrower would face to two percent. If the lira depreciated against the foreign currency, the UIC paid the difference between the ceiling rate and the actual rate. If the lira appreciated against the foreign currency, the UIC collected the difference between the floor rate and the actual rate.

The Department previously found the steel industry to be a dominant user of the exchange rate guarantees provided under Law 796/76, and on this basis, determined that the program was specific, and therefore, countervailable. *See Seamless Pipe from Italy*, 60 FR at 31996. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. This program provides a financial contribution that benefits the recipient to the extent that the lira depreciates against the foreign currency beyond the two percent band and provides a benefit in the amount of the difference between the two percent ceiling rate and the actual exchange rate.

We note that the program was terminated effective July 10, 1991, by Decree Law 333/91. However, payments continue on loans that were outstanding after that date. Bolzano was the only producer who used this program, and it received payments in 1996 on loans outstanding during the POI.

Once a loan is approved for exchange rate guarantees, payments are automatic and made on a yearly basis throughout the life of the loan. Therefore, we treat the payments as recurring grants. To calculate the countervailable subsidy, we used our standard grant methodology for recurring grants and expensed the benefits in the year of receipt. At verification, we found that Bolzano paid a foreign exchange commission fee to the UIC on each payment it received. We determine that this fee qualifies as an ''. . . application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.'' *See* section 771(6)(A) of the Act. Thus, for purposes of deriving the countervailable subsidy, we have added the additional foreign exchange commission to the total amount Bolzano paid under the Exchange Rate Guarantee program. We then divided the total payments received in 1996 on the two loans by the value of Valbruna/ Bolzano's total sales in 1996. On this basis, we determine the countervailable subsidy to be 0.08 percent *ad valorem* for Valbruna/Bolzano.

E. Export Credit Financing Under Law 227/77

Under Law 227/77, the Mediocredito Centrale S.p.A. (Mediocredito), a GOI-owned development bank, provides interest subsidies on export credit financing. Under the program, the Mediocredito makes an interest contribution to offset the cost of a supplier's or buyer's credit financed by a commercial bank. The holder of the loan contract pays a fixed, low-interest rate on export credits taken out through the program with a commercial bank. The Mediocredito guarantees a specified variable market rate, and pays the lender any shortfall between the guaranteed market rate and the fixed rate provided to the borrower. If the market rate falls below the rate provided to the borrower, the Mediocredito receives the difference.

Valbruna used this program for a supply contract with its affiliated U.S. subsidiary, Valmix Corporation, which entered into a loan contract for purposes of importing merchandise manufactured by Valbruna. The term of the loan was 18 months and during the course of this financing arrangement, the Mediocredito made interest contributions to Valmix's commercial lender.

In the preliminary determination, we found that this program provides countervailable subsidies within the meaning of section 771(5) of the Act. Our review of the record, our findings at verification, and our analysis of the comments submitted by the interested parties have led us to change, in part, our finding in the preliminary determination. We stated that we would examine the Respondents' claim that, because the interest contributions are consistent with the OECD Arrangement on Guidelines for Officially Supported Export Credits (OECD Guidelines), the program qualifies for an exemption under Item (k) of the Illustrative List of Prohibited Export Subsidies under Annex 1 of the WTO Agreement on Subsidies and Countervailing Measures. Based on the record evidence, however, we find that the OECD Guidelines do not apply to the Valmix loan because the repayment terms of this loan are for 18 months and the OECD Guidelines cover financing arrangements with repayment terms of a minimum of 24 months. Therefore, we need not consider Valbruna/Bolzano's arguments with respect to Item (k). *See, e.g., Final Affirmative Countervailing Duty Determinations; Certain Carbon Steel Products from Austria*, 50 FR 33369 (Aug. 19, 1985) (*Carbon Steel Products from Austria*). We continue to find that the interest contributions provided on the Valmix loan constitute a countervailable export subsidy under section 771(5) of the Act.

In accordance with the Department's practice, we treat interest contributions as reduced-interest rate loans if the borrower is aware at the time the loans are undertaken that the interest contributions will be received. *See, e.g., Certain Steel from Italy*, 58 FR at 37332. In the preliminary determination, we treated the interest contributions as grants because Valmix did not know at the time that the loan was undertaken that it would receive the contributions. However, we learned at verification that all parties were aware at the time that the loan was contracted that Valmix would receive these contributions. Therefore, we have changed our calculation of the benefit and have instead treated the Law 227/77 export credit financing as a reduced-interest rate loan. To calculate the benefit provided by this program, we compared the amount that Valmix paid under the loan and the amount Valmix would have paid on a commercial loan absent the interest contributions. We divided the benefit during the POI by Valbruna/Bolzano's total exports to the United States. On this basis, we determine the countervailable subsidy to be 0.15 percent ad valorem for Valbruna/Bolzano.

F. Law 451/94 Early Retirement Benefits

Law 451/94 authorized early retirement packages for steel workers for the years 1994 through 1996. The law entitled men of 50 years of age and women of 47 years of age with at least 15 years of pension contributions to retire early. Employees of Bolzano used the measures in all three years of the program. Bolzano is the only company subject to this investigation that had workers retire under Law 451/94 during or before the POI. In the preliminary determination, we found this program to be not countervailable. Our review of the record, our findings at verification, and our analysis of the comments submitted by the interested parties have led us to change our finding from the preliminary determination.

In the preliminary determination, we found early retirement benefits under Law 451/94 non-countervailable because the program did not relieve Bolzano of a normal obligation to its workers. Further, to the extent that the company did have costs associated with employees leaving through other means, those costs were lower than the ones faced by the company under this early retirement measure. At verification, information about this program was clarified. We learned that large companies in Italy cannot simply layoff workers without using one of the specially-designated programs for that purpose. The most comparable program to Law 451/94 is the extraordinary Cassa Integrazione Guadagni (CIG), which is used by companies in a wide variety of industries. The CIG program was found non-countervailable in *Electrical Steel from Italy*.

During verification, we found that under the extraordinary CIG, companies must continue to pay a small percentage of the employee's salary and set aside the mandatory severance contributions under Article 2120 of the Italian Civil Code. Under Law 451/94, the company incurs no additional costs. Thus, when we compared the costs associated with Law 451/94 to the costs associated with the extraordinary CIG, we found that companies would incur higher costs under the extraordinary CIG.

On this basis, we determine that Law 451/94 provides a financial contribution to the steel industry under Section 771(5)(D)(i) of the Act, and it confers a benefit to the recipient in the amount of costs covered by the GOI that the company would normally incur. Law 451/94 is specific under 771(5A)(D) because early retirement benefits under this program are limited, by law, to the steel industry. Accordingly, we find early retirement benefits provided under Law 451/94 to be countervailable subsidies under 771(5) of the Act.

Consistent with the Department's practice, we have treated payments under Law 451/94 as recurring grants expensed in the year of receipt. *See GIA*, 58 FR at 37226. To calculate the benefit conferred to Bolzano, we calculated the costs Valbruna/Bolzano would have incurred during the POI under the extraordinary CIG program and compared that to what the company paid under the Law 451/94 early retirement program. We divided this amount by Valbruna/Bolzano's total sales. On this basis, we determine the countervailable subsidy for this program to be 0.04 percent ad valorem for Valbruna/Bolzano.

Programs of the Regional Governments

A. Valle d'Aosta Regional Assistance Associated with the Sale of CAS

As discussed in the preliminary determination, when CAS was privatized, the land and buildings were sold to the Autonomous Region of Valle d'Aosta which now leases back the facility to the new owners of CAS. The framework for this triangular transaction among ILVA, CAS, and the Region was established through the protocols of agreement signed November 19, 1993. The Region, through its wholly-owned financing corporation, Finaosta S.p.A., agreed to (1) purchase the land, including the hydroelectric facilities owned by ILVA Centrali Elettriche S.p.A. (ICE) for 150 billion lire, in five annual installments, (2) to construct a waste plant, (3) to cover the costs of environmental reclamation on the land, up to 32 billion lire, and (4) to supply electricity directly to CAS from the ICE plants. In exchange, ILVA agreed to transfer CAS to a private party by December 31, 1993, with a restructuring fund. The purchaser of CAS's shares agreed to (1) vacate and abandon areas of the property not used in production activity; and, (2) to guarantee positions for 800 employees after the privatization.

Because of the complex nature of these transactions, which included different elements that were alleged to provide subsidies to CAS, we have analyzed each element separately as detailed below.

1. Purchase of the Cogne Industrial Site

Under section 771(5) of the Act, in order for a subsidy to be countervailable, it must, *inter alia*, confer a benefit. In the case of the government acquisition of goods, in this case land and buildings, a benefit is conferred if the goods are purchased for more than adequate remuneration. Problems can arise in applying this standard when the government is the sole purchaser of the good in the country or within the area where the respondent is located. In these situations, there may be no alternative market prices available in the country. Hence, we must examine other options when determining whether the good has been purchased for more than adequate remuneration. This consideration of other options in no way indicates a departure from our preference for relying on market conditions in the relevant country, specifically market prices, when determining whether a good or service is being purchased at a price which reflects adequate remuneration. *See, e.g., Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany,* 62 FR 54990, 54994 (Oct. 22, 1997) (*German Wire Rod*).

As discussed in the preliminary determination, because there were no comparable sales of commercial real estate or other appropriate benchmark prices, we examined the purchase price to determine whether it was market-based. We found that the Region based its price upon a detailed, independent appraisal of the value of the site, but further discounted the price from the appraisal based on the fact that the land was occupied and that it had some environmental problems. Based on this analysis, we concluded that the Region did not purchase the Cogne industrial site for more than adequate remuneration. No evidence has been presented to warrant a change from this finding from the preliminary determination. Therefore, we find that the Region of Valle d'Aosta's purchase of the Cogne industrial site does not constitute a subsidy within the meaning of section 771(5) of the Act.

2. Lease of Cogne Industrial Site

Under section 771(5) of the Act, in order for a subsidy to be countervailable it must, *inter alia* confer a benefit. In the case of government provision of goods or services, a benefit is normally conferred if the goods or services are provided for less than adequate remuneration. The adequacy of remuneration is normally determined in relation to local prevailing market conditions as defined by section 771(5)(E) of the Act to include, ''* * * price, quality, availability, marketability, transportation, and other conditions of purchase or sale.'' Problems can arise in applying this standard when the government is the sole supplier of the good or service in the area, in which case there may be no alternative market prices. In this case, we must examine other options for determining whether the good has been provided for less than adequate remuneration. Where the government leases land, the Department has recognized several options for examining whether a countervailable benefit is provided through the relevant leasing arrangement. These options include examining, ''whether the government has covered its costs, whether it has earned a reasonable rate of return in setting its rates and whether it applied market principles in determining its prices.'' *German Wire Rod,* 62 FR at 54994. This consideration of other options in no way indicates a departure from our preference for relying on market conditions in the relevant country, when determining whether a good or service is being provided at a price which reflects adequate remuneration.

After the purchase of the land and buildings, Struttura Valle d'Aosta S.r.l. (Structure), a company wholly-owned by the Region, assumed the lease that had been between Cogne S.p.A. and CAS for the use of the site until a new lease could be negotiated. In 1996, Structure and CAS entered into a thirty-year lease for the facility which produces subject merchandise. The new lease implements the commitments set forth in the protocols of agreement: the facility is leased to CAS; CAS undertakes all maintenance on the facility (including extraordinary maintenance); and CAS commits to vacate approximately 50 percent of the property in favor of the Region. The lease was also designed to provide for the stable employment of 800 employees at the facility.

In the preliminary determination, we found that there was no appropriate transaction benchmark for evaluating the adequacy of remuneration in the lease. Therefore, we compared the Region's rate of return in the lease to that which would be provided in a private transaction for the long-term use of assets, using the average interest rate on treasury bonds as reported by the Banca d'Italia. However, we stated that for the final determination we would revisit this methodology: (1) to gather the information necessary in order to amortize the depreciation of the buildings subject to the lease; (2) to determine whether payments for extraordinary maintenance should be considered part of the lease; (3) to make an adjustment to the benchmark to account for extraordinary maintenance if appropriate; and (4) to determine whether there was a non-governmental interest rate that would be a more appropriate benchmark.

We have reconsidered these issues in light of the information gathered at verification and comments from the interested parties, summarized below. The record evidence indicates that the average rate of return on leased commercial property in Italy is 5.7 percent. *See* ''Discussions with company officials from Gabetti per L'impressa, Banca di Roma and Reconta Ernst & Young,'' dated June 3, 1998, on file in the CRU (Commercial Experts Report). We have used this rate of return as the benchmark in evaluating the adequacy of remuneration in the lease. As an average, this rate reflects different terms, lengths, and locations of lease contracts throughout Italy. This rate better reflects commercial practices in Italy than does the rate used in the preliminary determination. That rate was based on treasury bonds and would require a number of complicated and highly speculative adjustments to reflect a representative rate for leasing commercial property. Thus, in our view, the 5.7 percent rate is a more reliable and representative rate to use in examining whether the facility is being leased for less than adequate remuneration.

In applying the 5.7 percent rate, we have determined that no adjustments to this rate are warranted for either depreciation or extraordinary maintenance payments. First, we verified that the buildings covered by the lease are very old. Given the age of the structures, we have not adjusted the rate upward to reflect the depreciation of the structures because the likely useful life remaining would be relatively short.

Second, the record evidence demonstrates that although the Italian Civil Code obliges the landlord to pay for extraordinary maintenance, this obligation may be borne by the lessee if specified in the lease. In particular, we learned at verification that long-term leases often oblige the lessee to bear responsibility for these costs because of the long-term costs involved. The CAS lease is for a period of 30 years, the maximum allowed under Italian law. Thus, the terms of this particular contract are such that a commercial landlord would most likely have assigned this obligation to the tenant. Further, the obligation would be factored into the negotiation for the lease rate. To the extent that CAS may face an additional financial obligation not incurred by other parties because of extraordinary maintenance, it is balanced by the fact that CAS's lease term is much longer than the norm.

Therefore, the average rate of return is an appropriate benchmark without any adjustments for these terms.

In order to determine whether the Regional government receives adequate remuneration under the CAS lease, we compared the amount paid by CAS during the POI to the amount that would have been paid using 5.7 percent as the average rate of return. Based on this comparison, we found that the Region is not receiving an adequate rate of return on the lease, and therefore, we determine that the facility has been leased for less than adequate remuneration. Through this lease, the Autonomous Region of Valle d'Aosta made a financial contribution to CAS within the meaning of section 771(5)(D)(iii) of the Act, equal to the difference between what would have been paid annually in a lease established in accordance with market conditions and what CAS actually paid. The lease is specific within the meaning of section 771(5)(D) of the Act, because the lease is limited to CAS. Therefore, we determine that the CAS industrial lease provides a countervailable subsidy within the meaning of section 771(5) of the Act.

To calculate the benefit, we determined the difference between the amount that would have been paid during the POI if the lease rate had been determined with reference to market conditions and the amount actually paid. We divided the amount by CAS's total sales in 1996. On this basis, we determine the countervailable subsidy to be 0.23 percent ad valorem for CAS.

3. Provision of Electricity

In the preliminary determination, we found that this program does not exist because the Region is not permitted to supply electricity directly to CAS through the planned electricity consortium and because CAS purchases electricity from ENEL, the state monopoly, in accordance with standard provisions applied to other commercial electricity users in Italy. Our review of the record, our findings at verification, and our analysis of the comments submitted by the interested parties have not led us to modify our finding from the preliminary determination. Therefore, we continue to find that this program does not exist. However, in the event this investigation results in a countervailing duty order, we will continue to review this allegation in any subsequent administrative review to determine whether changes in the Italian law allow for direct purchase of electricity from entities other than ENEL. Continued examination of this program in subsequent reviews is necessary because the protocol agreements specify that the Region will supply electricity to CAS.

4. Waste Plant

In the preliminary determination, we found that this program does not yet exist because the Region has not yet started construction of the waste plant. Thus, CAS is not benefitting from the provision of waste disposal services that the Region will provide once the plant is in operation. Our review of the record, our findings at verification, and our analysis of the comments submitted by the interested parties have not led us to modify our finding from the preliminary determination. However, in the event this investigation results in a countervailing duty order we will continue to review this allegation in any subsequent administrative review to determine whether a benefit will have been provided to CAS through the provision of waste disposal services for less than adequate remuneration.

5. Loans Provided to CAS to Transfer Its Property

In the protocols of agreement of November 1993, the Region agreed to provide financing through Finaosta S.p.A. for the costs involved with the transfer of the CAS property off the portion of the site not subject to the lease. The Region plans to develop facilities for small and medium-sized enterprises on this portion of the site after the environmental reclamation of the land is complete. The provision of up to 25 billion lire in reduced interest rate financing to CAS was authorized under Regional Law 37 of August 30, 1995.

The provision of these loans was evaluated by the EU under its state aid rules. In a June 15, 1995, decision, the EU determined that the loan was not aid, but instead an indemnity to CAS. The EU concluded that because the Region had unilaterally terminated part of CAS's lease (the Cogne S.p.A.-CAS lease which included the property to be vacated), the loans represented compensation for the costs associated with the termination. However, as detailed in the preliminary determination, our analysis revealed other important facts related to this deal. CAS and the Region agreed in the protocols of agreement that CAS would vacate 50 percent of the land. The protocols of agreement predate the Cogne S.p.A.-CAS lease. As such, we found in the preliminary determination that the loans provide countervailable subsidies to CAS within the meaning of section 771(5) of the Act. Our review of the record and comments summarized below have not led us to change this finding. *See Department's Position* on *Comment 16.*

The Region's financing company, Finaosta, provided this financing in three separate loan agreements over 1996 and 1997 with the interest rate set at 50 percent of the Rendistato rate, a variable rate. Under the terms of each loan contract, a deferred six-month payback schedule was established. In the preliminary determination, we stated that these loans had an eighteen-month interest-free grace period. At verification, we discovered that, in fact, interest payments were required during the first eighteen months of each loan. We have modified our calculation accordingly. We compared the interest payments made by CAS during the POI to the interest that would have been paid under the benchmark loan during the POI, using the benchmark rate discussed in the ''Subsidies Valuation Information'' section above. We divided the benefit by the 1996 total sales of CAS. On this basis, we determine the countervailable subsidy to be 0.19 percent *ad valorem* for CAS.

B. Valle d'Aosta Regional Law 64/92

Law 64/92 of the Autonomous Region of Valle d'Aosta provides funding to cover up to 30 percent of the cost of installing environmentally-friendly industrial plants in the province. Any firm in Valle d'Aosta may apply to the Regional Industry, Craft, and Energy Department (ICED) to have part of its costs covered for a specific environmentally-friendly project. Each project requires a separate application which is evaluated by a technical committee appointed by the ICED for this purpose. Each project must be approved by the technical committee in order to be funded, up to 30 percent of the total costs. These grants provide a financial contribution within the meaning of section 771(5)(D)(i) of the Act and provide a benefit to the recipient in the amount of the grant.

Law 64/92 is not de jure specific because the enacting legislation does not explicitly limit eligibility to an enterprise or industry or group thereof. We examined data on the provision of assistance under this program to determine whether the law meets the criteria for de facto specificity under section 771(5A)(D)(iii) of the Act. Since the inception of the program only nine companies have been approved for benefits. While this alone would be sufficient for a finding of de facto specificity because there are only a few companies in a few industries that have received assistance under this program, we also examined data on the value of grants given to these firms. CAS and one other firm received close to two-thirds of the total assistance awarded, with each firm receiving approximately one-third of the total. Thus, CAS received a disproportionate share of the total assistance under this program. Accordingly, we find Law 64/92 to be de facto specific within the meaning of section 771(5A)(D)(iii) of the Act. Therefore, we determine that Law 64/92 provides a countervailable subsidy within the meaning of section 771(5) of the Act.

Since applicants must submit a separate application for each project, we are treating the grants received under the program as non-recurring. *See GIA*, 58 FR at 37226. CAS received three grants under the program, two in 1995 and one in 1996. The total of the grants received in each year did not exceed 0.5 percent of sales in the relevant year so we have expensed the full amount of each grant in the year of receipt. To calculate the countervailable subsidy, we divided the total amount of the 1996 grant by the value of CAS's total sales. On this basis, we determine the countervailable subsidy to be 0.02 percent ad valorem for CAS.

C. Valle d'Aosta Regional Law 12/87

Law 12/87 of the Autonomous Region of Valle d'Aosta funds the promotion of commercial activities of local firms in other regions of Italy, and abroad. Companies apply to ICED for funding up to 30 percent of the costs of promotional activities in Italy (up to 10 million lire) and 40 percent of the costs of promotional activities abroad (up to 15 million lire). CAS submitted three applications for funding under this program. The region approved and funded two of the proposals, both in 1996: a grant of 15 million lire for participation in the Singapore Wire and Cable Fair and a grant of 12.7 million lire for participation in the Dusseldorf Wire Fair. Law 12/87 provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act, and provides a benefit to the recipient in the amount of the grant.

The Department has recognized that general export promotion programs, programs which provide only general information services including ''image'' events do not constitute countervailable subsidies. *See, e.g., Fresh Cut Flowers from Mexico*, 49 FR 15007, 15008 (April 16, 1984) and *Final Negative Countervailing Duty Determination: Fresh Atlantic Salmon from Chile*, 63 FR 31437, 31441 (June 9, 1998) (*Chilean Salmon*). However, where such activities promoted a specific product, or provided financial assistance to a firm for transportation and/or marketing expenses, we have found the programs to constitute countervailable subsidies. *See, e.g., Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish from Canada*, 51 FR 10041, 10067 (March 24, 1986) (*Groundfish from Canada*); *Chilean Salmon*, 63 FR at 31440. CAS received direct contributions from the Region of Valle d'Aosta to cover costs associated with participation in these trade shows including transportation, lodging, and marketing expenses. Because the financial assistance under this law was provided to CAS for the promotion of its exports, we find that the assistance to CAS constitutes an export subsidy within the meaning of section 771(5A)(B) of the Act.

We find that the grants received under this program are non-recurring because they are exceptional rather than on-going and require separate applications and approvals. *See GIA*, 58 FR at 37226. However, because the grants did not exceed 0.5 percent of CAS's total exports in the year provided (*i.e.*, the POI), we allocated the entire amount of the grants to the year of receipt. We divided the total amount of the two grants by the value of CAS's total exports during the POI. On this basis, we determine the countervailable subsidy to be 0.01 percent ad valorem for CAS.

D. Province of Bolzano Assistance: Purchase and Leaseback of Bolzano Industrial Site

As discussed in the preliminary determination, when Falck sold Bolzano to Valbruna, it sold the Bolzano land and buildings to the Autonomous Province of Bolzano which now leases the facility back to Valbruna/Bolzano. The Province bought two pieces of property, the ''Stabilimento Sede,'' which was owned by Bolzano, and the ''Stabilimento Erre,'' owned by Immobiliare Toce S.r.l., a subsidiary of Falck with real estate holdings. The purchase price for both portions was established by the Provincial Cadastral Office. The purchase was authorized under Provincial Council Resolution 850 of February 20, 1995, and was made on July 31, 1995. Valbruna entered into concurrent negotiations with the Province for a long-term lease of the Bolzano industrial site.

Because of the complex nature of these transactions, which included different elements that were alleged to provide subsidies to Bolzano, we have analyzed each element separately as detailed below.

1. Purchase of Bolzano Industrial Site

Where the government purchases a good, the Department analyzes whether the good was purchased for more than adequate remuneration and therefore confers a benefit. Our standard with respect to the government's purchase of goods is discussed in the ''Purchase of the Cogne Industrial Site'' above. As with our analysis of the Cogne land transaction, there are no private purchases of industrial sites comparable to the Bolzano property that are representative of the prevailing market conditions by which to assess the adequacy of remuneration for the purchase of the Bolzano industrial site. However, there is information on the record of this investigation that can be used to determine the adequacy of remuneration of the Bolzano industrial site.

In order to analyze whether the purchase of the Bolzano industrial site was made for more than adequate remuneration, it is important to understand the transactions underlying the purchase, and subsequent leasing, of the Bolzano industrial site. The purchase of the industrial site was part of a complicated process of transactions conducted by three parties: The Province of Bolzano, Falck, and Valbruna. The Province of Bolzano was interested in purchasing industrial land within its borders and in maintaining employment. Falck was seeking to exit the steel industry and was considering closing the Bolzano site. Valbruna was interested in increasing its steel operations. Therefore, while Falck was negotiating with the Province for the sale of the Bolzano industrial site, Falck was negotiating with Valbruna for the purchase of the Bolzano company. Concurrently, the Province and Bolzano were negotiating for the lease of the land and buildings of the industrial site. As a result of these negotiations, a share purchase agreement, land sale agreement, and lease agreement finalized these transactions on July 31, 1995. The transactions among the three parties are interrelated. The purchase of the industrial site by the Province of Bolzano is closely linked to the leasing arrangement between Valbruna and the Province.

The price paid by the Province of Bolzano for the land was based upon the estimate undertaken by the Provincial Cadastral Office. As stated above, there were no purchases of industrial sites comparable to the Bolzano site that could be used to assess the adequacy of remuneration of that purchase price. However, we verified that Valbruna had agreed to pay the same price as that negotiated between Falck and the Province if those negotiations for the sale of the land fell through. In the preliminary determination, we concluded that Valbruna's agreement to purchase the site for the same price indicated that the price paid by the Province was determined in reference to market conditions. Therefore, we concluded that the purchase of the land by the Province of Bolzano was not made for more than adequate remuneration. Our review of the record, findings at verification and review of comments summarized below (*see* the *Department's Position* on *Comment 1*) have not led us to reconsider our finding. Therefore, we find that this program does not constitute a subsidy within the meaning of section 771(5) of the Act.

2. Lease of Bolzano Industrial Site

In the case of government provision of goods or services, the Department analyzes whether the good or service was provided for less than adequate remuneration and therefore confers a benefit. Our standard with respect to the government's sale of goods is discussed in the ''Lease of the Cogne Industrial Site'' section above. When the government is the sole supplier of the good or service in the area and there may be no alternative market price, it becomes necessary to examine other options for determining whether the good has been provided for less than adequate remuneration. The Department has recognized several options with respect to the leasing of land, ''to examine whether the government has covered its costs, whether it has earned a reasonable rate of return in setting its rates and whether it applied market principles in determining its prices.'' *See, e.g., German Wire Rod* at 54994. This consideration of other options in no way indicates a departure from our preference for relying on market conditions in the relevant country, when determining whether a good or service is being provided at a price which reflects adequate remuneration.

The terms of the Province of Bolzano-Valbruna lease are as follows. The lease contract signed July 31, 1995, provides for a thirty year term. Valbruna pays the Province of Bolzano rent in six-month installments. Valbruna undertakes all maintenance on the facility (including extraordinary maintenance). The lease was also designed to provide for the stable employment of 650 employees at the facility.

In the preliminary determination, we found that there was no transaction that could be used as an appropriate benchmark for evaluating the adequacy of remuneration in the lease. Therefore, we compared the Region's rate of return on the lease to that which would be provided in a private transaction for the long-term use of assets, using the average interest rate on treasury bonds as reported by the Banca d'Italia. However, we stated that for the final determination we would revisit this methodology: (1) to gather the information necessary in order to amortize the depreciation of the buildings subject to the lease; (2) to determine whether payments for extraordinary maintenance should be considered part of the lease; (3) to make an adjustment to the benchmark to account for extraordinary maintenance if appropriate; and (4) to determine whether there was a non-governmental interest rate that would be a more appropriate benchmark.

We have reconsidered these issues in light of the information gathered at verification and comments from the interested parties, summarized below. The record evidence indicates that the average rate of return on leased commercial property in Italy is 5.7 percent. See Commercial Experts Report. We have used this rate of return as the benchmark in evaluating the adequacy of remuneration in the lease. As an average, this rate reflects different terms, lengths, and locations of lease contracts throughout Italy. This rate better reflects commercial practices in Italy than does the rate used in the preliminary determination. That rate was based on treasury bonds and would require a number of complicated and highly speculative adjustments to reflect a representative rate for leasing commercial property. Thus, in our view the 5.7 percent rate is a more reliable and representative rate to use in examining whether the facility is being leased for less than adequate remuneration.

In applying the 5.7 percent rate, we have determined that no adjustments to this rate are warranted for either depreciation or extraordinary maintenance. First, we verified that the buildings covered by the lease are very old. Given the age of the structures, we have not adjusted the rate upward to reflect the depreciation of the structures because the likely useful life remaining would be relatively short.

Second, the record evidence demonstrates that although the Italian Civil Code obliges the landlord to pay for extraordinary maintenance, this obligation may be borne by the lessee if specified in the lease. In particular, we learned at verification that long-term leases often oblige the lessee to bear responsibility for these costs because of the long-term costs involved. The Bolzano lease is for a period of 30 years, the maximum allowed under Italian law. Thus, the terms of this particular contract are such, that a commercial landlord would most likely have assigned this obligation to the tenant. Further, the obligation would be factored into the negotiation for the lease rate. To the extent that Bolzano may face an additional financial obligation than other parties because of extraordinary maintenance, that is balanced by the fact that CAS's lease term is much longer than the norm. Therefore, the average rate of return is an appropriate benchmark without any adjustments for these terms.

In order to determine whether the Provincial government receives adequate remuneration under the Bolzano lease, we compared the rent under the Bolzano lease to the amount that would have been paid using 5.7 percent as the average rate of return. Based on this comparison, we found that the Province is not receiving an adequate rate of return on the lease, and therefore, we determine that the facility has been leased for less than adequate remuneration. Through this lease, the Autonomous Province of Bolzano made a financial contribution to Bolzano within the meaning of section 771(5)(D)(iii) of the Act, equal to the difference between the Bolzano rent and what would have been paid annually in a lease established in accordance with market conditions. The lease is specific within the meaning of section 771(5)(D) of the Act, because the lease is limited to Valbruna/Bolzano. Therefore, we determine the Bolzano industrial lease provides a countervailable subsidy within the meaning of section 771(5) of the Act.

To calculate the benefit, we found the difference between the amount that would have been paid during the POI if the lease rate had been determined with reference to market conditions and the actual rent. We divided the amount by Valbruna/Bolzano's total sales in 1996. On this basis, we determine the countervailable subsidy to be 0.16 percent ad valorem for Valbruna/Bolzano.

3. Lease Exemption

Under the Province of Bolzano-Valbruna/Bolzano lease, Valbruna/Bolzano agreed to assume certain environmental reclamation costs instead of paying rent for the first two years of the lease. In the preliminary determination, we found that this program conferred a countervailable subsidy to Valbruna/Bolzano. Based on our review of the record, our findings at verification, and our analysis of the comments submitted by the interested parties, summarized below, we continue to find this lease exemption to be a countervailable subsidy, but the basis for the determination has changed, in part.

To determine whether the program provides a countervailable subsidy to Valbruna/Bolzano, we examined whether the Province's actions in granting the lease exemption were consistent with the usual practices of private landlords. When the Province purchased the land and buildings, there were a number of environmental problems that required costly repairs. While such a situation would be extremely unusual, a commercial landlord may very well have given a similar exemption to a tenant in order to have these problems addressed. However, a private landlord would ensure that the amount of repairs met or exceeded the cost of the rent, the tenant actually did the work, and the landlord legally had the responsibility to undertake the projects. At verification, Valbruna presented evidence that the costs incurred exceeded the amount of rent due. In addition, a list of environmental issues that Valbruna agreed to remedy was included as an enclosure to the lease. Valbruna documented that these projects, as well as other measures related to asbestos clean-up, had been undertaken.

Thus, in order to determine whether the nonpayment of rent for the first two years constitutes a countervailable subsidy to Valbruna/Bolzano, we examined whether or not the Province of Bolzano would have been responsible for these environmental reclamation costs. Under Italian law, the landlord would normally bear the responsibility for pre-existing environmental costs under a normal lease agreement. In the preliminary determination, we countervailed this lease exemption as a grant because we found that the projects undertaken related to the plant and equipment which was owned by the company instead of the buildings which were owned by the Province. However, upon further examination during verification, we found that most of the projects undertaken related to modifications of the buildings in order to permit the installation of new or alteration of existing equipment.

During verification, we received clarification as to when the need to undertake some of these environmental reclamation projects had been identified. In particular, we noted that one of the principal measures which related to noise and air pollution, had been identified several years prior to the purchase of the land. The Province explained that local residents had complained in the past regarding air and noise pollution originating from the Bolzano site. The Province asked Bolzano to develop a proposal to solve the problem. In 1992, the Province agreed to Bolzano's proposal to encapsulate the melting furnace in order to reduce air and noise pollution. By 1995, Bolzano still had not undertaken the encapsulation project. Instead, it was included in the round of environmental work covered by the lease payment exemption. This project accounted for a substantial portion of the costs undertaken by Valbruna in exchange for the period of free rent. Thus, the Province imposed an obligation on Bolzano to undertake environmental measures several years before the signing of the lease. Then, the Province agreed to forgo revenue in order to see that the obligation was fulfilled.

Valbruna also reported costs related to the clean up and removal of asbestos from the buildings. According to the Province, regulations regarding the removal of asbestos are designed to protect the health and safety of workers. Thus, normally the employer has primary responsibility for these efforts. When the employer rents the facility, the company could, as the tenant, request that the landlord undertake the asbestos removal on the buildings. However, since Valbruna agreed to assume the obligation for extraordinary maintenance under the lease, the company would have no means of requiring the owner to do the repairs. Thus, the Province agreed to forgo revenue in order to have the asbestos problem addressed even though it would not have been its responsibility to pay for the damages.

In both of these instances, the Province did not have an obligation to undertake the work in question. Thus, since it was the obligation of Valbruna/Bolzano to pay for these projects, which accounted for virtually all of the costs incurred, either because the obligation was incurred before the lease or because the company had assumed the obligation under the lease, there is no basis for Valbruna/Bolzano's claim that the rent exemption is not countervailable because it only covered costs for which the Province was responsible. Therefore, we find that the relief from rent payment for the first two years of the Valbruna/Bolzano industrial lease provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, in the form of revenue forgone, which provides a benefit in the amount of rent that would normally have been collected. The lease exemption is specific under section 771(5)(D) of the Act because it was limited to Valbruna/Bolzano. Accordingly, we determine that the exemption from payment of rent under the lease of the Bolzano industrial site provides a countervailable subsidy under section 771(5) of the Act. The lease exemption provides non-recurring subsidies because its provision is limited, by the terms of the lease, to the first two years. However, because the benefit from the exemption did not exceed 0.5 percent of Valbruna/Bolzano's total sales in the years provided, we allocated the entire amount to the year of receipt. We divided the amount of the rent exemption for the POI by Valbruna/Bolzano's total sales. On this basis, we determine the countervailable subsidy to be 0.38 percent ad valorem for Valbruna/Bolzano.

E. Province of Bolzano Law 25/81

The Province of Bolzano Law 25/81 is a general aid measure that provides grants to companies with limited investments in technical fixed assets. It targets advanced technology, environmental investment, or restructuring projects. Restructuring assistance is provided to companies under Articles 13 through 15. Articles 13 through 15 establish different eligibility requirements, different application procedures, different levels of available aid, and different types of aid (grants and loans) than assistance provided under other Articles of Law 25/81. Therefore, we find it appropriate to examine Articles 13 through 15 of Law 25/81 as a separate program. *See, e.g., Live Swine from Canada; Final Results of Countervailing Duty Administrative Review,* 62 FR 18087, 18091 (April 14, 1997) (*Live Swine from Canada*). Bolzano received a total of 18.6 billion lire in restructuring grants from 1983 through 1992. It also had a small amount from restructuring loans outstanding during the POI, which were provided at concessionary, long-term fixed rates.

In our preliminary determination, we did not make a countervailability finding on Articles 13 through 15 because we did not have the information to analyze the de facto specificity of assistance provided solely under the restructuring program, *i.e.,* Articles 13 through 15. As discussed above, we have determined it is appropriate to examine the restructuring aid provided through these articles as a separate program. During verification, we obtained Provincial budget records which listed the total amount from loans and grants provided through the restructuring program in the years 1982 through 1992, because these were the years during which Bolzano was provided assistance. In each of the years in which Bolzano received funds under this program Bolzano received a significant percentage of total assistance awarded. While assistance was provided to a number of firms during this period, Bolzano received a much larger share in comparison to the total aid awarded. In fact, Bolzano was the largest single recipient of restructuring assistance. Bolzano received far more than the average recipient over this period. Thus, we conclude that the restructuring assistance granted to Bolzano under Articles 13 through 15 of Law 25/81 is de facto specific within the meaning of section 771(5A)(D)(iii) of the Act because Bolzano received a disproportionate share of benefits. The restructuring aid provides a financial contribution which confers a benefit in the amount of grants, and interest savings on reduced-rate long-term loans. Therefore, we determine that Articles 13 through 15 of Provincial Law 25/81 provide a countervailable subsidy within the meaning of section 771(5) of the Act.

We note that on July 17, 1996, the EU found in its decision number 96/617/ECSC that the aid granted to Bolzano under Law 25/81 was illegal because it was not notified to the EU, and was ''incompatible with the common market pursuant to Article 4(c) of the ECSC treaty.'' *See* October 27, 1997, response of the EU, public version on file in the CRU. As a result, the EU ordered the repayment of all grants and loans made to Bolzano which were approved after January 1, 1986. The EU decision did not require the repayment of Bolzano assistance approved prior to January 1, 1986.

As discussed in the ''Corporate Histories'' section above, Falck sold Bolzano to Valbruna in 1995. According to the terms of the sale, Falck retained the liability for repayment of these benefits should the EU rule against Bolzano. Pursuant to the EU's 1996 ruling, Falck effectively repaid the assistance under Law 25/81 approved and granted to Bolzano after 1986. Repayment was effected through Falck receiving a lower payment from the GOI under an assistance program and the GOI transferring that amount to the budget of the Province of Bolzano. Falck is appealing the EU's decision. For the reasons set forth in the *Department's Position* on *Comment 3* below, we do not consider the payment by Falck to affect our analysis of the benefit to Bolzano.

Bolzano received grants for four restructuring projects under this law: one was approved in 1983, another was approved in 1985, and two were approved in 1988. Because Bolzano submitted a separate application to the regional authority for each project, we are treating the grants received under Articles 13 through 15 of Provincial Law 25/81 as non-recurring. *See GIA,* 58 FR at 37226. Pursuant to the Department's non-recurring grant methodology, to calculate the benefit from the restructuring grants we allocated the grants over Valbruna/Bolzano's AUL to determine the benefit in each year. To determine the benefit from the restructuring loans that were still outstanding during the POI, we compared the long-term fixed-rate provided under the program to the benchmark rate described in the ''Subsidies Valuation Information'' section above since the company did not have long-term fixed rate loans from the same period. We then applied the Department's standard long-term loan methodology and calculated the grant equivalent for the loans. Next, we applied the methodology discussed in the ''Change in Ownership'' section above to the grants and loans. We then summed the benefit amounts attributable to the POI from Bolzano's grants and loans and divided the total benefit by Valbruna/Bolzano's total sales. On this basis, we determine the countervailable subsidy to be 0.28 percent ad valorem for Valbruna/Bolzano.

Programs of the European Union

A. ECSC Article 54 Loans

Article 54 of the 1951 ECSC Treaty established a program to provide industrial investment loans directly to the iron and steel industries to finance modernization and the purchase of new equipment. Eligible companies apply directly to the EU for up to 50 percent of the cost of an industrial investment project. The Article 54 loan program is financed by loans taken out by the EU, which are then refinanced at slightly higher interest rates than those at which the EU obtained them.

The Department has found Article 54 loans to be specific in several proceedings, including *Electrical Steel from Italy, Certain Steel from Italy,* and *UK Lead Bar 94,* because loans under this program are provided only to iron and steel companies. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. This program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act that provides a benefit to the recipient in the difference between the amount paid on the loan and the amount which would be paid on a comparable commercial loan that the recipient could actually obtain.

Valbruna did not use this program. Bolzano and CAS received Article 54 loans. Bolzano had two loans outstanding during the POI, one denominated in U.S. Dollars, the other in Dutch Guilders. CAS received one Article 54 loan in 1996 with a variable interest rate on which no interest or principal payments were due during the POI. Since these payments would not have been due on a comparable commercial loan, there is no benefit received during the POI, and thus, we find that the program is not used with respect to CAS.

With respect to the loans to Bolzano, we would have used as a benchmark interest rate a long-term borrowing rate for loans denominated in the appropriate foreign currency in Italy. However, we were unable to find such rates. Therefore, we used the average yield to maturity on selected long-term corporate bonds as reported by the U.S. Federal Reserve for the loan denominated in U.S. dollars, and the long-term bond rate in the Netherlands as reported by the International Monetary Fund for the loan denominated in guilders. (We note that Bolzano entered into the loan contract for the loan denominated in U.S. dollars in 1979. However, the interest rate for that loan was renegotiated in 1992. Therefore we have treated it as a new loan from that point and used a 1992 benchmark).

At verification, we found that Bolzano paid foreign exchange fees and semi-annual guarantee fees on the Article 54 loans. Thus, we added these additional expenses into the total amount that Bolzano paid under the program. We also added an amount equal to the foreign exchange fees Valbruna/Bolzano pays on commercial loans to the benchmark loan. We then compared the cost of the benchmark financing for each loan to the financing Bolzano received under the program and found that both loans provided a financial contribution. To calculate the benefit in the POI, we employed the Department's standard long-term loan methodology. We calculated the grant equivalent and allocated it over the life of each loan. We then applied the methodology discussed in the ''Change in Ownership'' section above. We divided the benefit allocated to the POI by the 1996 sales of Valbruna/Bolzano. On this basis, we determine the countervailable subsidy to be less than 0.005 percent ad valorem for Valbruna/Bolzano.

B. European Social Fund

The European Social Fund (ESF) is one of the Structural Funds operated by the EU. The ESF was established in 1957 to improve workers' opportunities and raise their standards of living. The ESF principally provides vocational training and employment aids. There are five objectives identified under the ESF for funding: Objective 1 covers projects located in underdeveloped regions, Objective 2 covers areas in industrial decline, Objective 3 relates to the employment of persons under 25, Objective 4 relates to vocational training for employees in companies undergoing restructuring, and Objective 5 relates to agricultural areas. CAS, Valbruna, and Bolzano received ESF assistance under Objective 4 during the POI.

In the preliminary determination, there was insufficient evidence on the record to determine whether Objectives 3 and 4 provide countervailable subsidies. We noted, however, that the Department had previously found certain benefits under Objectives 1, 2, or 5(b) countervailable because assistance was limited to companies in specific regions. *See, e.g., Pasta from Italy,* 61 FR at 30294. Nevertheless, based on the record evidence, we were unable to determine whether the companies in this proceeding received ESF funding based on their location. In light of this insufficient record evidence, we explained that we would continue to examine the specificity of this program for the final determination.

During verification, we clarified several critical facts related to the ESF program. First, we clarified that companies may receive ESF funding directly even if they are not located in Objective 1, 2, or 5 regions. Neither Valbruna nor Bolzano is located in an Objective 2 region. Second, we discovered that funding was provided to companies subject to this investigation only under Objective 4 of the ESF. Objective 4 is aimed at vocational training, in particular anticipating labor market trends, training employees of small and medium-sized enterprise, and training workers at risk for unemployment. Officials explained that for Objective 4, there are 13 regional and three multiregional operational programs in Italy.

At the beginning of each multi-year programming period, the Regional authorities, GOI, and the EU negotiate the framework and the budget for projects to be funded and administered pursuant to Objective 4. This negotiation establishes the Single Programming Document, which includes broad goals for the Objective 4 projects throughout Italy and sets the budget and more specific goals for each of the operational programs. The most recent Single Programming Document for Italy covers the years 1994 through 1999. For the regional operational programs, normally 45 percent is funded by the EU, 44 percent by the GOI, and 11 percent by the Region. The regional operational programs are administered by the regions, which each publicly announce opportunities to receive funding for projects consistent with Objective 4 objectives. The multiregional operational programs are funded only by the EU and the GOI with approximately 55 percent of the program funding from the EU and 45 percent from the GOI. *See* GOI Verification Report. The GOI administers these multiregional programs. Although the EU and the GOI monitor the overall implementation of Objective 4 regional operational programs, and the EU monitors the overall implementation of Objective 4 multiregional operational programs, neither entity participates in the project approval process.

The ESF programs under Objectives 1, 2 and 5b are similar to the projects provided under Objective 4 but identify broader goals and target different segments. Under Objectives 1, 2, and 5b, the unemployed, and workers in science and technology are also eligible for training projects including post graduate training. In Objective 1, teachers, pupils, and civil servants may also benefit from training programs that are aimed at strengthening education and training programs. Thus, even at the broadest level, the Objectives have different aims.

Based on the fact that the projects funded pursuant to each ESF Objective are administered by different authorities at the EU, the GOI, and regional levels, the budgets are set for each separate objective with no transferability between the objectives, and there is a separate approval process for projects under different objectives, we find that Objective 4 of the ESF in Italy should be examined as a separate program for the purpose of determining whether funding provided under Objective 4 is specific within the meaning of the Act. *See, e.g., Live Swine from Canada,* 62 FR at 18091.

The Department normally examines funding provided from jurisdictional levels separately to determine whether each level of funding is specific within the meaning of the Act. Since funding for Objective 4 projects is provided at three different levels for the regional operational programs, we have examined each separately to determine specificity. The Single Programming Document negotiated among the EU, the GOI, and the regional authorities sets the program goals and budgets for the Objective 4 projects funded throughout Italy. Although Objective 4 funding is available throughout the Member States, the EU negotiates a separate programming document to govern the implementation and administration of the program with each Member State. *See* ''Verification Report of the Responses of the European Commission of the European Union,'' dated June 1, 1998, public version on file in the CRU. We find that the EU funding under Objective 4 in Italy is *de jure* specific within the meaning of section 771(5A)(D)(iv) of the Act because it is limited on a regional basis to Italy. *See, e.g., Groundfish from Canada,* 51 FR at 10048. GOI funding of Objective 4 projects is available in all areas of Italy except the Objective 1 areas, thus, eligibility is limited on a regional basis to the center and north of Italy. *See* GOI Verification Report. On this basis, we also find the GOI funding to be *de jure* specific within the meaning of section 771(5A)(D)(iv) of the Act.

We then examined the funding provided by the Region of Valle d'Aosta and the Province of Bolzano in the regional operational programs. We found that the operational programs in both Valle d'Aosta and the Province of Bolzano are not *de jure* specific. We also examined each of the regional authorities' funding pursuant to the *de facto* specificity criteria under section 771(5A)(D)(iii) of the Act. In each case, we found that benefits were distributed to many firms within each region and that the firms represented a wide variety of the industries within each region. Further, the steel industry in each region received a small amount of the total benefits awarded in comparison to other industries in the region. We determine that the funding provided by Valle d'Aosta and the Province of Bolzano under their respective regional operational programs (11 percent) is not specific under section 771(5A)(D) of the Act, and is therefore, not countervailable.

The Department considers training programs to benefit a company when the company is relieved of an obligation it would otherwise have incurred. *See Electrical Steel from Italy,* 59 FR at 7255. All three companies subject to this investigation applied for grants to conduct training programs to increase the production-related skills of their own employees. Since companies normally fund training to enhance the job-related skills of their own employees, we determine that ESF Objective 4 funds relieve companies of an obligation. The ESF Objective 4 grants are a financial contribution under section 771(5)(D)(i) of the Act which provide a benefit to the recipient in the amount of the grant. Therefore, we determine that the ESF grants constitute countervailable subsidies within the meaning of section 771(5) of the Act.

The Department normally considers worker training programs to be recurring. *See GIA,* 58 FR at 37255. However, ESF Objective 4 grants relate to specific and individual projects and each project requires separate government approval. Therefore, we determine that ESF Objective 4 grants are non-recurring; however, because the Objective 4 grants provided to CAS in 1994 through 1996 and Valbruna/Bolzano in 1996 were less than 0.5 percent of the company's sales, we allocated the full amount of the Objective 4 non-recurring grants to the years of receipt.

To calculate the benefit from the regional operational programs, we used 89 percent of each grant awarded to CAS and Bolzano during the POI. This percentage represents the amount of funding from the GOI and EU under the regional operational programs. To calculate the benefit from the multiregional program, we used 100 percent of the grant awarded to Valbruna, because only the GOI and EU funded grants provided under the multiregional operational programs. For Valbruna/Bolzano, we summed the benefits from the grants and divided by the company's total sales. For CAS, we divided the benefit by the company's total sales. On this basis, we determine the countervailable subsidy to be 0.03 percent *ad valorem* for CAS and 0.05 percent *ad valorem* for Valbruna/Bolzano.

II. Programs Determined to be Non-Countervailable

A. Law 46: Technological Innovation Fund

Under the Technological Innovation Fund (FIT) of Law 46/82, the GOI provides grants to companies for projects that contain a high degree of technological innovation. In the preliminary determination, we found that this program was not countervailable because it was not specific within the meaning of section 771(5A) of the Act. However, we stated that for the final determination, we would continue to examine whether the provision of FIT assistance was contingent upon export performance. We verified that FIT assistance has been awarded to non-exporters, companies with low-levels of export sales, and companies with high-levels of export sales and that export performance is not a factor in the evaluation process. We reviewed applications which were both accepted and rejected and found that in no case was an application accepted because of high levels of exports or potential high levels of exports, and in no case was an application rejected because of a low level of exports. In all cases, the applications were evaluated based solely on the degree of technological innovation contained in the proposal. Thus, we verified that export performance was not a criterion used in the approval of grants under this program. Therefore, we determine that the Law 46 FIT program does not meet the definition of an export subsidy within the meaning of section 771(5A)(B) of the Act, and we continue to find the program not countervailable.

B. Law 308/82

In response to our request for information on ''other subsidies'' in the questionnaire, the GOI reported that Valbruna received grants for energy conservation under Law 308/82. However, this program was found to be non-countervailable in Certain Steel from Italy because it provided benefits to a wide variety of industries, with no sector receiving a disproportionate amount. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this determination.

III. Programs Not Used

Based on the information provided in the responses and the results of verification, we determine that CAS and Valbruna/Bolzano did not apply for or receive benefits under the following programs during the POI:

A. Benefits Associated with Finsider-to-ILVA Restructuring

In the preliminary determination, we countervailed the GOI's coverage of Deltacogne S.p.A.'s losses in conjunction with the restructuring of Finsider into ILVA. We followed the methodology used in *Electrical Steel from Italy* in examining the restructuring of Deltacogne into Cogne S.r.l. *Electrical Steel from Italy,* 59 FR at 18366. This approach resulted in a calculation of 120 billion lire in losses that we assumed remained with Finsider and were covered by IRI.

At verification, we discovered new information relevant to the Department's treatment of the Deltacogne-to-Cogne S.r.l. restructuring. Deltacogne was merged into ILVA S.p.A. with ILVA receiving all of the assets and liabilities of Deltacogne. No liabilities or losses remained in a shell company that were folded into Finsider and assumed by the GOI. We were able to confirm this by examining the merger contract and examining information in the 1989 ILVA financial statement. To the extent there was a difference in the financial condition of Deltacogne and Cogne S.r.l., it reflects that the companies had different holdings. Therefore, we find that the ''Benefits Associated with the Finsider-to-ILVA Restructuring Program'' is not used.

B. Grants for Interest Payments Under Law 193/1984
C. Law 46 and 706 Grants for Capacity Reduction
D. ECSC Article 56(2)(b) Retraining Grants
E. Resider Program
F. Law 675
 1. IRI Bonds
 2. Mortgage Loans
 3. Personnel Retraining Aid
 4. Interest Grants on Bank Loans
G. Debt Forgiveness: 1981 Restructuring Plan
H. Law 481/94
I. Decree Law 120/89
J. Law 394/81 Export Marketing Grants and Loans
K. Law 488/92 and Legislative Decree 96/93
L. Law 341/95 and Circolare 50175/95
M. Valle d'Aosta Regional Law 16/88
N. Valle d'Aosta Regional Law 3/92
O. Bolzano Regional Law 44/92
P. Interest Rebates on ECSC Article 54 Loans
Q. ECSC Article 56 Loans
R. European Regional Development Fund

IV. Programs Determined Not to Exist

Based on information provided in the responses and the results of verification, we determine that the following programs do not exist:

A. R&D Grants to Valbruna
B. Subsidies for Operating Expenses and ''Easy Term'' Funds
C. 1993 European Commission Funds

Interest Party Comments

Comment 1: Province of Bolzano's Purchase of the Bolzano Industrial Site: Valbruna/Bolzano asserts that the Department properly determined that the Province of Bolzano did not purchase the Bolzano industrial site for more than adequate remuneration. Respondent argues that Valbruna's willingness to purchase the Bolzano industrial site at the purchase price agreed to by the Province and Falck, in the event that the sale was not consummated, and the fact that the purchase price paid by the Province was in line with the estimates in an independent appraisal done by an architect hired by Valbruna, demonstrate that the industrial site was not purchased for more than adequate remuneration. Valbruna states that the Province's own estimate of the price of the land, which was comparable to that paid for neighboring properties on a per-square meter basis, demonstrates that the purchase was in accordance with market conditions and could not be for more than adequate remuneration. The architect's appraisal corroborates this conclusion. Finally, Valbruna argues that the information about other land transactions in the Province of Bolzano is an appropriate benchmark to evaluate the adequacy of remuneration, and this information demonstrates that Bolzano received no countervailable benefit from the sale of the land.

Petitioners argue that Valbruna cannot be considered an uninterested party in the land deal. Petitioners state that although Valbruna claimed it was willing to pay the same price for the property as the Province in the event that arrangements with Falck fell through, the chronology of the deal demonstrates that Valbruna knew it would never have to purchase the site. Petitioners contend that the Share Purchase Agreement provides evidence that Valbruna would not have been required to purchase the site. Petitioners further argue that Valbruna never has provided an adequate appraisal of the property and that the architect's appraisal is based on a number of inaccurate assumptions. Petitioners compare the facts related to the Bolzano land sale to the Cogne land sale, and contend that this comparison reveals that the Bolzano transaction was not in accordance with market conditions because unlike Valle d'Aosta, Bolzano's appraisal of the property is insufficiently detailed. Petitioners contend that other information also indicates that other parties were not interested in purchasing the land.

Petitioners also argue that the Department should use the amount of debt reduction that Bolzano experienced contemporaneously with the sale of its industrial property as a proxy for the benefit derived from this transaction since Respondents failed to provide sufficient information to establish an appropriate benchmark to measure the adequacy of remuneration in the land deal. Petitioners state that the other sites —Magnesio, Aluminia, and IVECO—are not comparable to the Bolzano site. Petitioners argue that the Department should select a benchmark in order to evaluate whether the site was purchased for more than adequate remuneration which reflects that the site had minimal commercial value because of the environmental problems. Petitioners state that the purchase price for the land was used to improve the financial health of Bolzano by reducing its financial burdens, and thus Valbruna received a benefit from the transaction. Petitioners argue that the primary goal of the land deal was improving Bolzano's balance sheet.

Respondent replies that Falck's use of the money is irrelevant and that the reduction of debt resulting from the sale of the land cannot be demonstrated to be a countervailable benefit.

Department's Position: Regarding the Province's purchase of the Bolzano industrial site, we agree with Respondent's arguments that the purchase was not made for more than adequate remuneration. Our findings at verification on this matter confirmed that: (1) the Cadastral Office of the Province of Bolzano conducted an appraisal of the land and buildings prior to purchasing the site from Falck; (2) Valbruna agreed to purchase the site at the price determined by Bolzano in the event that the arrangement between the Province and Falck did not come to fruition; and (3) the Province had fulfilled all of its contractual agreements to Falck regarding the purchase of the site. On this basis, we find that the price paid by the Province for the Bolzano industrial site was in accordance with market conditions.

Regarding Petitioners' argument that the Department should use the amount of debt reduction that Bolzano experienced contemporaneously with the sale of its industrial property as a proxy for the benefit derived from this transaction, the Department disagrees. Because the Department has determined that the Province did not purchase the site from Falck for more than adequate remuneration, the Department finds that Falck and its subsidiaries did not derive a countervailable benefit from the sale, within the meaning of section 771(5)(E)(iv) of the Act.

In addition, we also disagree with Petitioners' argument that Valbruna's agreement to purchase the land from Falck is inappropriate to consider in determining whether the Province of Bolzano paid more than adequate remuneration for the industrial site. We recognize that it was highly unlikely that Valbruna would have to perform on this obligation. However, given that the Province used the acquisition price in determining the lease rate, we infer that Valbruna had a strong commercial interest in ensuring that Falck did not pay more than adequate remuneration for the site. In addition, under the leasing agreement between the Province of Bolzano and Valbruna, Valbruna has the option to purchase the industrial site from the Province within five years of the signing of the lease. For these reasons, we consider Valbruna's guarantee to Falck that it would acquire the property for the price agreed to between Falck and the Province of Bolzano is an indication that the price paid by the Province of Bolzano for the Bolzano industrial site was reflective of market considerations. Therefore, the purchase of the industrial site by the Province of Bolzano does not constitute a subsidy within the meaning of section 771(5) of the Act.

Comment 2: Bolzano Lease: Valbruna/Bolzano argues that the Province of Bolzano's lease of the Bolzano industrial site to Valbruna provided adequate remuneration to the Province and thus did not confer a benefit. Respondent claims that because the lease covered the Province's costs, earned a reasonable rate of return based on what was charged in other provinces, and reflected market-based pricing, it is provided for adequate remuneration. Regarding the two-year rent exemption, Respondent argues that the exemption reflected an exchange between the parties in accordance with market principles in which Valbruna reciprocated by assuming responsibility for environmental reclamation and extraordinary maintenance costs usually attributed to the lessor. Respondent further argues that the Department should combine Valbruna's annual rent charges with its environmental and extraordinary maintenance expenses in determining whether the company paid adequate remuneration to the Province under the lease.

Petitioners argue that the provisional lease agreement with Valbruna did not reflect normal market conditions and therefore provides a countervailable subsidy. In calculating the benefit, Petitioners argue that the Department should not offset rent payments with any extraordinary maintenance or environmental reclamation payments by the company. In addition, Petitioners argue that, due to the length of the lease, the Department should treat the lease as a long-term loan and use the adjusted Bank of Italy Reference Rate as a benchmark. Petitioners further argue that Valbruna has failed to undertake environmental clean-up costs as required under the lease. Petitioners contend that the Department should treat these unpaid costs as revenue foregone within the meaning of the statute in its final analysis.

Department's Position: Section 771(5)(E) of the Act states that the adequacy of remuneration with respect to a government's provision of goods or services shall be determined in relation to prevailing market conditions for the goods or services provided. When the government leases land, the Department has determined that examining the rate of return is a reasonable approach in determining the adequacy of remuneration in the absence of alternative market reference prices. *See, e.g., German Wire Rod,* 62 FR at 54994. As explained above, the record evidence demonstrates that the average rate of return in Italy on leased commercial property is 5.7 percent. *See* Commercial Experts Report. Based on our comparison of the Province's rate of return under the Bolzano lease with this benchmark, we determine that the Province did not receive adequate remuneration. As Valbruna/Bolzano acknowledges in its case brief, the Province earned less than a 5.7 percent rate of return on the lease.

Based on our analysis of the Province's rate of return under the lease, a further examination of whether the Province covered its costs and whether the terms of the lease reflected market-based pricing is unnecessary. As we noted in *German Wire Rod,* the Department identified the factors of covering costs, earning a reasonable rate of return, and reflecting market-based pricing as several reasonable options, and not a three-prong analysis as Valbruna suggests. Because we were able to obtain a reliable rate of return to serve as the appropriate benchmark, we have not relied upon additional factors in this final determination.

The record evidence also supports our determination to countervail the two-year rent exemption Valbruna/Bolzano received under the lease. The Province agreed to offset Valbruna/Bolzano's rent payments for the first two years of its lease in exchange for the company's agreement to pay for extraordinary maintenance and environmental clean-up costs at the Bolzano plant site. However, the record evidence demonstrates that in situations involving long-term leases, the lessee often bears responsibility for extraordinary maintenance costs. *See* Commercial Experts Report. While the Italian Civil Code does provide for extraordinary maintenance to be paid by the landlord in instances where it is otherwise not specified in the contract, the terms of Valbruna's contract, in particular the company's thirty-year lease term, lead us to conclude that a commercial landlord would have assigned the extraordinary maintenance costs to the tenant, with no special rent abatement. Thus, we do not consider this arrangement to constitute a sid pro quo exchange between Valbruna and the Province.

Moreover, the record evidence demonstrates that the Province's normal practice is to require lessees to pay for environmental clean up costs. Provincial government officials explained that the Province normally requires companies to pay for environmental costs and investments without any kind of rent exemption from the Province. As an example, Provincial officials described a situation involving Falck, the former parent company of Bolzano. In 1992, the Province issued a decision requesting that Falck proceed, at its own expense, with a noise reduction project. *See* Province of Bolzano Verification Report, dated June 1, 1998, public version on file in the CRU. Although Falck never proceeded with the plan, the Province's request for Falck to assume responsibility for the costs of the environmental project provides a concrete example of how companies in the Province are normally responsible for costs associated with environmental reclamation projects. This record evidence supports our determination that the two-year rent exemption provided a financial contribution in the form of foregone government revenue. On this basis, we also find it inappropriate to make any adjustments for Valbruna's extraordinary maintenance or environmental costs.

As discussed above, because we were able to obtain a reliable average rate of return on commercial leased property, we have not adopted the Petitioners' proposal that we use the adjusted Bank of Italy Reference Rate as a benchmark. Although this 5.7 percent rate of return reflects rates that include different terms, lengths, and locations in Italy, we consider this benchmark to be a better reflection of commercial practices than the methodology described in the preliminary determination and that put forth by Petitioners. Moreover, the rate used in the preliminary determination was based on treasury bonds and would require a number of complicated and highly speculative adjustments to reflect a representative rate for leasing commercial property.

Petitioners' argument that we should not make an adjustment for the costs of environmental clean-up because Valbruna failed to undertake such activity is not supported by the record evidence. We verified that Valbruna did incur many expenses related to the environmental projects on the Bolzano site. However, as explained above, we have not made any adjustments to the rate, and therefore the issue is moot.

Comment 3: Province of Bolzano Law 25/81: Valbruna/Bolzano argues that for a subsidy to exist, there must be a financial contribution which confers a benefit. Valbruna/Bolzano contends that the Department verified that the financial contribution under this program was repaid and therefore, the subsidy ceases to exist. Respondent argues that the Department has applied this rationale in cases where Respondents have repaid grants, citing *Certain Fresh Cut Flowers from Peru,* 52 FR 6837 (March 5, 1987) and *Certain Steel Products from South Africa,* 58 FR 62100 (Nov. 24, 1993), as case precedent for treating repaid subsidies as noncountervailable. Further, Valbruna/Bolzano argues that Falck's decision to appeal the matter is irrelevant citing *Certain Steel Products from Germany,* 58 FR 37315 (July 9, 1993).

Alternatively, to the extent the Department determines that some or all of the Law 25/81 assistance constitutes a countervailable subsidy, Respondent contends that the subsidy is not *de facto* specific. First, Respondent argues that the Department should assess the specificity of the program across Law 25/81 as a whole as opposed to treating the restructuring assistance granted under Articles 13 through 15 as a separate program. Valbruna argues that under this analysis, Law 25/81 provides aid to a wide variety of industries and enterprises. Respondent also argues that Bolzano did not receive a disproportionate share of benefits. Finally, Respondent argues that, in the event that the Department limits its specificity analysis to Articles 13 through 15, it should examine the aid Bolzano received in the context of the entire life of the program.

Petitioners take issue with Respondent's arguments regarding the *de facto* specificity analysis of the restructuring assistance granted to Bolzano under Law 25/81. Petitioners argue that the Department should uphold the decision reached in its preliminary determination and treat the restructuring assistance granted under Articles 13 through 15 of Law 25/81 as a separate program. Petitioners contend that under this analysis, Bolzano received a disproportionate share of benefits in each award year. Petitioners also argue that the Department should examine the *de facto* specificity of the restructuring assistance granted to Bolzano on a year-by-year basis. With respect to Respondent's repayment argument, Petitioners counter that because Falck has appealed the EU's decision that part of the assistance provided under the program was illegal and had to be repaid, the final disposition of the matter has not been settled so the Department may not consider the funds as being repaid.

Department's Position: We disagree with Respondent's argument that we should find no benefits from assistance approved after 1986 under Law 25/81 because part of the subsidy has been repaid. As discussed above, Falck has appealed the EU's decision, and therefore, we are not considering this issue. Contrary to Respondent's assertion, this appeal is relevant to this inquiry because the final disposition of the repayment has not been settled. In *Certain Steel from Germany,* the Department treated grants that would be repaid after the POI as a contingent liability. During verification in that case, the Department met with the tax authority that controlled the matter, and found that a repayment schedule was imminent. Thus, the Department was satisfied that the decision of the tax authority was final. *See Certain Steel from Germany,* 58 FR at 37324. Falck has appealed the EU's decision to the Court and the matter will likely remain unresolved for a number of years. Therefore, we are not considering the repayment at this time and need not address Respondent's arguments pertaining to this issue. We have appropriately treated this assistance as countervailable and have allocated to Valbruna/Bolzano the benefit derived from these subsidies using the Department's standard methodology described in the ''Change in Ownership'' section above. Should this investigation result in a countervailing duty order and should an administrative review be requested, once there is a final judgement concerning Falck's appeal, we will reconsider this issue at that time.

We also disagree with the Respondent's argument that the aid given to Bolzano under Articles 13 through 15 of Law 25/81 is not *de facto* specific. In our preliminary determination, we found that there were separate and distinct eligibility requirements, levels of funding, application procedures, and types of benefits provided under Articles 13 through 15. At verification, we confirmed these facts. Therefore, consistent with the Department's practice, we have examined the restructuring assistance under Articles 13 through 15 as a separate program. *See, e.g., Live Swine from Canada,* 62 FR at 18091. Respondent has presented no arguments to counter this finding, but argues that Law 25/81 assistance is not *de facto* specific using data based on benefits provided under the entire aid program rather than aid provided solely under Articles 13 through 15, the restructuring program. However, when the level of benefits is examined under Articles 13 through 15, the record evidence supports our finding that Bolzano received a disproportionate share of assistance in each year in which Bolzano was provided assistance. Bolzano was the largest single recipient of aid from the inception of the program through the POI and received a far higher level of assistance when compared to the other firms that also received aid.

The Respondent's cite to *Certain Steel Products From Belgium* 58 FR 37280 (July 9, 1993) as support for its claim that the Department examines dominant use across the entire life of the program is misplaced. In that case, we examined disproportionate use of the Societe Nationale de Credit a l'Industrie (SNCI) program on a year-by-year basis. We stated, ''[f]or each of the years for which we have data during this period, the steel industry was the largest single recipient of SNCI investment lending.'' *Steel from Belgium,* 58 FR at 37280. The Department listed the percentage of benefits the steel industry received in each year the Belgian steel producers used the program. *Id.* Thus, the case cited by Respondent does not support the argument presented. However, as we stated in that case, we normally do not rely on a single year's worth of data to determine dominance or disproportionality as that might yield anomalous results. Thus, we examine all the years in which a company received benefits and additional years, if warranted, prior to each year assistance was provided. Whether we examine assistance under Articles 13 through 15 on a year-by-year basis, or for the span of years during which Bolzano received assistance, 1982 through 1992, we find that Bolzano received a disproportionate share of funds awarded.

Comment 4: Early Retirement Benefits under Law 451/94: Valbruna/Bolzano argues that the Department should affirm its preliminary determination that Law 451/94 is not countervailable. Valbruna states the Department correctly found that companies face the same, if not greater, financial commitments to their workers under Law 451/94 as under other early retirement programs that are available to non-steel workers in Italy, such as the extraordinary CIG program. Therefore, Respondent argues that Law 451/94 does not confer a benefit to Bolzano. To the extent that Law 451/94 did relieve Bolzano of an obligation, Respondent argues that it was an additional financial burden imposed by the GOI exclusively on the Italian steel industry that was over and above the obligations imposed upon other industries. Respondent states that under these circumstances the Department's policy is to treat worker assistance as noncountervailable, citing *Certain Steel Products from Belgium,* 58 FR at 37276. Alternatively, Respondent contends that, should the Department determine that Law 451/94 does provide a countervailable subsidy, the Department should measure the benefit as no higher than the difference between the expenses Bolzano would have incurred during the POI under the extraordinary CIG program and the expenses the company incurred under Law 451/94.

Petitioners argue that the Department should reverse its preliminary determination that Law 451/94 early retirement benefits are not countervailable because information submitted to the record subsequent to the Preliminary Determination demonstrates that the program relieves companies of obligations that they would otherwise incur. Petitioners contend that the verified record demonstrates that Law 451/94 imposes fewer early retirement costs on companies than the extraordinary CIG program. Petitioners agree with Respondent's assertion that the benefit under Law 451/94 should be calculated as the difference between the expenses Bolzano would have incurred during the POI under the provisions of the extraordinary CIG program and the expenses the company incurred under Law 451/94.

Department's Position: The Department's practice is to treat early retirement benefits as countervailable when the company is relieved of an obligation it would otherwise incur and that relief is specific. *See GIA,* 58 FR at 37255. During verification, GOI officials confirmed that Italian companies are not free to layoff workers at will. *See* GOI Verification Report. We also learned that, absent the Early Retirement Program under Law 451/94, steel companies would incur the costs associated with the extraordinary CIG program, including the contribution of a percentage of the worker's salary and the mandatory severance contributions under Article 2120. GOI officials also explained that the Early Retirement Program under Law 451/94 is less costly from the employer's perspective than the extraordinary CIG requirements because the company would not be required to contribute a percentage of salary or continue to set aside Article

2120 contributions. *See* GOI Verification Report, dated June 1, 1998, on file in the CRU. On this basis, we determined that Law 451/94 relieves steel companies from the obligation to pay the higher costs associated with the alternative CIG program. Therefore, we have countervailed the benefits Bolzano received under Law 451/94 in this final determination by calculating the costs Bolzano would have incurred under the extraordinary CIG program including the severance contributions that the company did not face under Law 451/94.

In claiming that Law 451/94 provides a benefit to the workers and not the steel companies, Valbruna has misconstrued the Department's practice. As explained in the *GIA,* where governments simply reimburse companies for additional payments imposed by special worker assistance programs, the governments have not relieved the companies of any obligation. *GIA,* 58 FR at 37256. In these situations, the Department considers the workers and not the companies as the recipient of the benefit. *Id.* Thus, in *Steel from Belgium,* the Department did not countervail the portion of benefits provided to the companies that were reimbursements for the additional payments imposed by the special steel program because those payments were never an obligation of the companies. *See Steel from Belgium,* 58 FR at 37276. Here, however, the record evidence demonstrates that because Italian companies are unable to layoff workers at will, companies are obligated to pay for severance and pension programs mandated under Italian law. Law 451/94 relieves the steel companies from the higher costs associated with these other severance and pension programs, such as the extraordinary CIG, and therefore is countervailable.

Comment 5: Plant Closure Grants under Law 193/84: Valbruna/Bolzano argues that the grants Falck received under Articles 2 and 4 of Law 193/84 were tied to the production of tubular and flat steel products, goods outside the scope of this investigation and, therefore, provided no benefit to Bolzano's exportation or production of subject merchandise. Consistent with the Department's practice for "tied" subsidies, the grants cannot be said to benefit the subject merchandise. Citing to *Steel Wire Rod from Canada,* Respondent also claims that the Department has refused to accept the "tied" nature of closure benefits only when the assistance is received after the plant has ceased production. Respondent further argues that the grants under Law 193/84 are not countervailable because the Department has not properly determined that the grants received by Falck passed through to Valbruna upon its purchase of Bolzano. Respondent contends that under the CIT's ruling in *Delverde S.r.l.* v. *United States,* 989 F. Supp. 218 (CIT 1997), because this is a private-to-private arm's length transaction, the Department must explain how the benefits received by the previous owner are not reflected in the purchase price and how the new owner received a benefit.

Petitioners respond that it is the Department's practice to attribute grants provided for the specific purpose of closing plants to all merchandise produced by the recipient, noting that the CIT upheld this practice in *British Steel Corp.* v. *United States,* 605 F. Supp. 286 (CIT 1985). Petitioners also argue that, pursuant to its practice, the Department is not obligated to explain whether or not Falck's benefits under Law 193/84 were reflected in the market value paid by Valbruna for the purchase of Bolzano's shares. Petitioners contend that the *Delverde* decision is not a binding final and conclusive judgment reversing Commerce's practice. Therefore, Petitioners argue that the Department should affirm its finding that the benefits attributable to Bolzano from Falck's use of Law 193/84 "passed through" to Valbruna when it bought Bolzano from Falck.

Department's Position: The Department disagrees with Respondent's assertion that the plant closure assistance Falck received under Law 193/84 did not benefit the export or production of the subject merchandise. The Department's practice with respect to corporate restructuring through the closure of plants is articulated in the *GIA,* 58 FR at 37270:

> * * * It has been argued that because plant closure results in the reduction of capacity, subsidies that promote such reduction cannot fall into the category of benefitting the manufacture, production or export of subject merchandise. However, * * * the Department's determination reflects the fact that once inefficient facilities are closed, the company can dedicate its resources to the efficient production of the remaining facilities. Therefore, closure payments for plants producing subject and non-subject merchandise alike are countervailable.

Moreover, contrary to Respondent's claim, this practice applies regardless of whether the assistance is received prior to the plant closure. *See e.g., Steel Wire Rod from Canada,* 62 FR at 54981. In *British Steel,* the CIT upheld the Department's practice ruling that, "[a]s a company becomes more cost efficient and thereby more price competitive, there is a direct benefit to the manufacture, production, and export of all the firm's products." *British Steel,* 605 F. Supp. at 293. The Department's "tying" practice is inapplicable to closure payments because the assistance provided confers a benefit on all of the company's operations.

We also disagree with Respondent's argument that the *Delverde* decision overturns the Department's methodology with respect to analyzing private-to-private change in ownership transactions. The CIT only directed the Department, on remand, to provide a fuller explanation of its methodology, and has not ruled on the Department's final remand determination. As explained in *UK lead Bar 96,* the Department continues to follow its existing methodology. *UK Lead Bar 96,* 63 FR at 18371. Under our existing methodology, we neither presume automatic extinguishment nor automatic pass through of prior subsidies in an arm's length transaction. Contrary to the Respondent's contention on this matter, the Department utilized the pertinent facts of the case in determining whether the grants received by Falck passed through to Valbruna. Following the *GIA* methodology, the Department subjected the level of previously bestowed subsidies and the purchase price paid by Valbruna to a series of tests and analyses. These analyses resulted in the "pass through ratio" used in this investigation. Under this methodology, some of the benefit passes through and some remains with the seller. On this basis, the Department determined that a portion of the benefits associated with Falck's closure assistance which were allocated to Bolzano was not extinguished when Falck sold Bolzano to Valbruna.

Comment 6: European Social Fund: Valbruna/Bolzano argues that worker training grants received by Valbruna and Bolzano under the ESF program did not relieve the company of obligations that they would otherwise incur. Respondent states that there is no evidence on the record to suggest that either company had incurred an obligation to provide training, therefore, the funding did not provide a countervailable subsidy. Respondent cites the preliminary determination from *Electrical Steel from Italy,* 59 FR 4682 at 4690, as evidence that the Department has agreed in other cases that "Italian companies have no legal obligation to retrain their workers." Should the Department determine that funds under the ESF program constitute a subsidy, Respondent maintains that the subsidy is not *de facto* specific. Respondent further argues that should the Department determine that the ESF program confers a countervailable subsidy, it should deduct the amount of service fees Valbruna paid to Riconversider for processing its application from the total amount of the grant awarded to Valbruna.

Petitioners argue that the Department, based on verified record evidence, should find the ESF countervailable on the basis of regional specificity. Petitioners argue that there are no clear dividing lines between the Objectives under the ESF as Cogne received funding under multiple Objectives since 1984. Further, Petitioners point out that the Province of Bolzano uses the same commission to evaluate applications under Objectives 3, 4, and 5(b). Petitioners argue that the ESF assistance is specific because the steel industry was a dominant user of the program since Riconversider received more than 50 percent of the funding under the Multiregional operational program during the POI. Citing *Electrical Steel from Italy,* 59 FR at 18368, Petitioners argue that the Department has a consistent policy of countervailing training benefits intended to train a company's own workers.

Department's Position: We disagree with Respondent that the training grants under the ESF program do not relieve Valbruna and Bolzano of obligations. In the final determination of *Electrical Steel from Italy,* we reversed the preliminary determination cited by Respondents, finding that funds used to upgrade the skills of workers are countervailable because these costs are normally borne by the company to improve the efficiency of its workforce. *See Electrical Steel from Italy,* 59 FR at 18368. In this investigation, we verified that the training assistance provided to Respondents under ESF Objective 4 funded training programs to enhance the skills of workers to improve the production process. *See* CAS and Valbruna/Bolzano Verification Reports. Companies have an implicit responsibility to train their workers on the manufacturing process for their own production. Therefore, we find that the training programs under Objective 4 of the ESF relieved the companies of an obligation they otherwise would have incurred.

We agree with Petitioners, in part, that the Objective 4 program in Italy is regionally specific. In the case of regional operational programs, funding for this program is divided between the EU, GOI, and regional authorities. Funding for multiregional operational programs is divided equally between the EU and the GOI. The EU portions of the grants are *de jure* specific because they are limited to a designated geographical region within the jurisdiction of the European Union. The GOI portions of the grants are *de jure* specific because they are limited to non-Objective 1 areas, *i.e.,* the center and north of the country. Because the funds provided by the Authority of the Region of Valle d'Aosta and the Authority of the Province of Bolzano are not limited on this basis, the Department analyzed whether the regional operational programs for Valle d'Aosta and the Province of Bolzano are provided on a *de facto* specific basis. The record evidence demonstrates that within each region grants are awarded to a wide variety of industries. Also, the steel industry's share of the grants was not disproportionate to other industries' shares. Therefore, we find that in the case of the regional operational programs, 89 percent of the funds are countervailable (45 percent from the EU, 44 percent from the GOI), and in the case of the multiregional operational funds, 100 percent of the funds are countervailable because these were funded solely by the GOI and the EU.

Finally, the Department agrees with Respondent that the expenses Valbruna paid to Riconversider should be deducted from the net amount the company received under Objective 4 of the ESF program. We verified that Valbruna had to pay service and commission fees in order to receive the ESF assistance. *See* Valbruna/Bolzano Verification Report. We determine that these fees qualify as an ''* * * application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.'' *See* section 771(6)(A) of the Act. Thus, in determining the benefit from the grants disbursed to Valbruna under Objective 4 of the ESF program, the Department subtracted the amount of money the company paid to Riconversider to derive the net amount of grants it received under the program.

Comment 7: ECSC Article 54 Loans: Respondent states that Bolzano repaid the Dutch Guilder loan it received under the ECSC Article 54 loan program and, since the program was discontinued in 1994, there is no possibility that Bolzano can receive any additional funding under the program. Thus, Respondent argues that this loan should not be included in any cash deposit rate established for Valbruna/Bolzano in the event of an affirmative final determination, citing *Pure and Alloy Magnesium from Canada,* 57 FR 30946 (July 13, 1992) in support of its position.

Petitioners argue that the Department understated the value of the benefit accruing to Bolzano as a result of its U.S. Dollar ECSC Article 54 loan. The interest rate for this loan was renegotiated in 1992. For the purposes of deriving a grant equivalent, the Department based its calculations from the time when the new interest rate was established. Petitioners argue that Bolzano was uncreditworthy in 1992 and, therefore, the Department should have used as a commercial benchmark, the highest long-term fixed interest rate available in the United States, plus a risk premium equal to 12 percent of the U.S. prime interest rate. Petitioners further argue that benefits Bolzano received under the Article 54 loan should be included in the cash deposit rate established for Valbruna/Bolzano in the event of an affirmative final determination.

Department's Position: We disagree with the Respondent's argument that the countervailable benefit from the Dutch Guilder loan Bolzano received under the ECSC Article 54 loan program, should not be included in any cash deposit rate. The Department's practice is to adjust the cash deposit rate to zero for countervailable subsidies only when there is a program-wide change, such as termination, and there are no residual benefits. *See Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey,* 61 FR 30366, 30370 (June 14, 1996). The Department deems a countervailable benefit to be received at the time when the firm experiences a difference in cash flows, either in the payments it receives or the outlays it makes. In the case of loans, the Department measures the receipt of the benefit at the time a firm is due to make a payment on the loan. In this instance, Bolzano repaid the Dutch Guilder loan it received after the POI. Moreover, repayment of a loan does not constitute a program-wide change. Therefore, consistent with the Department's practice, no change to the cash deposit rate is warranted.

These circumstances are distinguishable from those in *Magnesium from Canada,* where the Respondent repaid the grant in full during the POI. Thus, the Department did not include the subsidy in the cash deposit rate because the company's repayment of the grant during the POI extinguished the possibility of any future benefit. Therefore, should this investigation result in a countervailing duty order, the Department will include the net subsidy from this program in Valbruna/Bolzano's cash deposit rate.

We also disagree with Petitioners' claims that the Department understated the value of the benefit accruing to Bolzano as a result of its U.S. Dollar ECSC Article 54 loan. As stated above, in determining the benefit under this program, we derived our grant equivalent based on the year in which the interest rate was renegotiated. We agree that the renegotiation of the interest rate on the loan in 1992 can be viewed as the bestowal date of the loan and have calculated a new grant equivalent based on the renegotiated terms. However, contrary to Petitioners' claim, we do not find Falck to have been uncreditworthy in 1992 and, therefore, we have not added a risk premium to the benchmark rate.

Comment 8: Effective Interest Rates: Petitioners argue that the Department should add to the benchmark interest rate for long-term loans used in the preliminary determination, an additional spread that is representative of what Italian banks normally charge in bank fees to corporate clients. Petitioners also argue that the Department, in making this upward adjustment, should rely on the average interest rate spread on the ABI verified during its discussion with an official from a private Italian Bank.

Department's Position: We agree with Petitioners' argument that the Department should add a spread onto the benchmark in order to determine an effective long-term interest rate. As stated earlier in the ''Subsidies Valuation Information'' section, for purposes of this final determination, our long-term lira-denominated benchmark is based on the Italian Interbank Rate (ABI) because we verified that commercial banks in Italy consider the ABI rate the most suitable benchmark for long-term financing available to Italian companies. Commercial banks add a spread ranging from 0.55 percent to 4 percent onto that rate depending on the financial health of the recipient. Therefore, in years in which companies under investigation were creditworthy, we added the average of that spread (*i.e.*, 2.275 percent) onto the ABI rate to calculate a benchmark.

During verification, a commercial banker informed us that the interest rate charged to their clients is all inclusive and covers all fees, commissions, and other charges associated with the loan. *See* Commercial Experts Report. Therefore, by including the spread provided to us by an Italian commercial bank, we have calculated the effective cost of the loan because the benchmark interest rate includes all other charges associated with the loan.

Comment 9: Assumption of Losses: CAS argues that the Department erred in attributing any pre-1993 subsidies to CAS that were provided to its predecessors and its predecessor's parent companies. Specifically, CAS states that, because Deltacogne's accumulated losses were not ''distributed'' to Cogne during the Finsider-to-ILVA Restructuring, neither Cogne nor any other party that subsequently owned the Aosta facility received a countervailable benefit. Respondent states that there is no need for the losses of a predecessor company to be distributed to a successor company. CAS argues that the Department erred in calculating a benefit to CAS from this program because the ''losses'' involved no governmental transfers. CAS cites other cases (*Seamless Pipe from Italy* and *OCTG from Italy*) where the Department refused to investigate alleged assumptions on behalf of Dalmine (another subsidiary of Finsider/ILVA) because there was no record evidence demonstrating that the company's liabilities were forgiven by the GOI. Further, CAS argues that the facts discovered at verification confirm that ILVA's possible responsibility for a part of Deltacogne's liabilities did not represent debt-forgiveness on the part of the government. CAS states that no Deltacogne liabilities were assumed by IRI through the restructuring process because Deltacogne was not placed into liquidation, but was merged into ILVA.

Petitioners argue that the Department's preliminary analysis with respect to the 1989 restructuring program understated the actual benefit to CAS by focusing solely on losses instead of losses and liabilities. Petitioners argue that the Department's practice supports countervailing both the coverage of losses and the assumption/forgiveness of liabilities as separate subsidy events. In support of their position, Petitioners cite *Electrical Steel from Italy* which involved the same circumstances, but a different Finsider subsidiary, Terni Acciai Speciali S.r.l. (TAS), where the Department countervailed both liabilities and losses that were not distributed to ILVA as a result of the restructuring. Petitioners argue that the facts discovered at verification regarding the method through which Deltacogne was transferred to ILVA do not change the countervailability of Deltacogne's losses and liabilities that were not distributed to Cogne S.r.l., and to do so would elevate form over substance. Debts left in ILVA are part of the same program. Petitioners assert that when assets are redistributed and liabilities/losses are left in a shell company, there need not be a separate government action to show a benefit to the continuing entity. Petitioners state that it is the Department's well-established practice to find that relieving the continuing entity of the burden of liabilities and/or losses is a countervailable event citing *Certain Steel from Austria, Electrical Steel from Italy*, and *Steel Wire Rod from Trinidad and Tobago.* Thus, Petitioners argue that the Department should countervail all undistributed liabilities and losses with respect to the 1989 restructuring and creation of Cogne S.r.l. Petitioners state that the transformation in corporate form from Cogne S.r.l. to Cogne S.p.A. shortly after the creation of the company is important because it shows that liabilities remained with ILVA through this restructuring.

CAS responds that the statute requires a determination that the government provided a financial contribution to the entity, which is not demonstrable in this case. CAS also states that losses are not countervailable subsidies.

Department's Position: Based on the facts discovered at verification, the situation described in the preliminary determination does not accurately describe the events related to the restructuring of Deltacogne into ILVA and the creation of Cogne S.r.l. Thus, we have modified our approach to this program. As described in the ''Benefits Associated with the Restructuring of Finsider'' program above, our review of the record indicates that no liabilities/losses remained in Finsider as a result of the restructuring of Deltacogne into ILVA and subsequently, Cogne S.r.l. Because of the manner in which the operations of the Aosta facility were transferred from Deltacogne to ILVA and from ILVA to Cogne S.r.l., the record evidence does not demonstrate the extent to which all the liabilities and losses were distributed to Cogne S.r.l. that belonged to those operations. Several operations were included in Deltacogne (Aosta factory, hydroelectric plants, Verres steel works) which were merged into ILVA and then spun-off into separate entities. Information contained in the financial statements does not demonstrate that liabilities and losses that properly belonged to the Aosta operations were not distributed to Cogne S.r.l.

As the Petitioners point out, if liabilities or losses remained in ILVA that should have transferred to Cogne S.r.l., we would treat that as a separate subsidy event from the one originally alleged and examined, which involved the assumption of liabilities and losses left in Deltacogne S.p.A. by the GOI through Finsider S.p.A. *See, e.g., Certain Steel from Austria,* 58 FR at 37217.

In this respect, CAS is mistaken that assumption of losses by the government is not countervailable. The Department's long-standing practice has been to treat the assumption of losses as a countervailable event because such governmental action confers a benefit. *See e.g., Certain Steel from Austria*, 58 FR at 37217 and *Electrical Steel from Italy*. 59 FR at 18359. If losses are not distributed to the new company through a restructuring process, a benefit is conferred upon the productive assets of the new entity. Under Italian law, losses must eventually be accounted for—either offset by future profits or by a reduction in share capital. If, however, losses are assumed by the government that the company otherwise would bear responsibility for, then there is a benefit to the new company which receives the productive assets free of the losses associated with previous years of inefficient production.

Further, we disagree with CAS's interpretation of the statutory requirements regarding financial contributions. CAS apparently presumes that the URAA reversed the Department's practice in this regard. However, the SAA specifically states that ''practices countervailable under the current law [the pre-URAA statute] will be countervailable under the revised statute.'' SAA at 925. Moreover, the definition of ''financial contribution'' contained in section 771(5)(D) of the Act is ''not intended to be exhaustive'' but sufficiently broad to encompass the same types of government actions countervailed under the pre-URAA statute. *Id.* at 927. Thus, as with the assumption of liabilities, the assumption of losses by the government provides the equivalent of a direct transfer of funds that confers a benefit which is countervailable under section 771(5) of the Act. *See, e.g., Steel Wire Rod from Trinidad and Tobago*, 62 FR at 55012.

Respondent's reference to the initiations of *OCTG from Italy* and *Seamless Pipe from Italy* is without merit because the Department's legal standard in initiations is fundamentally different than that in preliminary and final determinations. At the initiation stage, the Department evaluates whether the information contained in the petition is sufficient to warrant investigation of alleged subsidies. *See* section 702(c) of the Act. Thus, a determination at the initiation stage that the petition contains insufficient evidence to warrant investigation is qualitatively different than a determination based upon the record evidence that there is no countervailable benefit from a program. Nevertheless, Respondent seems to be arguing that the Department should determine, based on the record evidence, that there is no benefit to CAS from this program. However, as discussed above, we have examined the record evidence in this case and determined that CAS did not receive countervailable benefits.

Therefore, while we agree with Petitioners that liabilities and losses left in ILVA that were not properly distributed to Cogne S.r.l. would constitute countervailable benefits that do not require a separate government action, we cannot reasonably conclude from the record evidence that liabilities and losses were not distributed to Cogne S.r.l. As such, we have found this program to be ''not used.''

Comment 10: CAS Does Not Benefit from Equity Infusions: CAS argues that the equity infusions to Deltasider and ILVA conferred no countervailable benefit on Deltasider, Cogne, or any other owner of the Aosta facility. CAS states the Department's proposed regulations and policy establish a rebuttable presumption that a subsidy received by one entity will be attributed to products only manufactured by that entity. *Countervailing Duties, Proposed Rule*, 62 FR 8818 (Feb. 26,1997) (*1997 Proposed Regulations*). CAS states that any subsidies ILVA received from the 1991–1992 equity infusions should be allocated exclusively to its unconsolidated operations because ILVA transferred none of that equity to Cogne (or other subsidiaries). CAS argues that in *OCTG from Italy* and *Seamless Pipe from Italy*, the Department declined to investigate subsidies provided to ILVA S.p.A. as a benefit to the subject merchandise in those cases because there was no evidence that subsidies were being channeled through to the production of the subject merchandise.

CAS argues further that Finsider's equity infusions in 1985–1986 provided no countervailable benefits to Deltasider, the Finsider operating company that held the Aosta operations during those years. CAS states that the Department's ''holding company'' rule, whereby subsidies received by a holding company are attributed to that company's consolidated sales, does not apply to government-owned holding companies such as Finsider. CAS cites *UK Lead Bar 96* and *Brass Sheet and Strip from France* to support its position that in order for a subsidy provided to a government-owned holding company to be attributed to the sales of its subsidiaries, there must be a demonstrated transfer. Further, CAS states that Finsider transferred none of its 1985–1986 equity infusions to Deltasider. CAS argues that, as a general principle, attributing a recipient's subsidy to an affiliated party absent evidence of an actual financial transfer violates standards established by Generally Accepted Accounting Principles that the Department must, in general, follow. CAS further argues that the existence of a consolidated financial statement is irrelevant to whether a subsidiary benefitted from a subsidy provided to the parent company. CAS contends that this method of attribution could present different results to similarly-situated subsidiary companies if one is consolidated and one is not.

Petitioners argue that the Department properly countervailed all instances of equity infusions in this case. Petitioners argue that Respondents overstate the Department's practice with respect to holding companies. Petitioners state that the Department's rule with respect to holding companies calls for the attribution of the untied subsidy to the consolidated sales, not any requirement to demonstrate pass-through to a particular subsidiary entity. Petitioners state the corporate relationship between ILVA and Cogne by itself is sufficient to attribute a portion of the equity infusions to Cogne. Petitioners cite the *GIA* and *UK Lead Bar* as support that, ''the Department often treats the parent entity and its subsidiaries as one when determining who ultimately benefits from the subsidy.'' *GIA* at 37262.

Department's Position: In the preliminary determination, the Department appropriately attributed the benefits from non-recurring untied subsidies received by ILVA and Finsider to the consolidated operations of the ILVA and Finsider Groups which included Cogne, the producer of subject merchandise. This is consistent with the Department's practice that attributes untied subsidies to the company's total domestically-produced sales. *GIA*, 58 FR at 37267. When the parent company of a consolidated group receives untied subsidies, such as equity infusions, these domestic subsidies are normally attributed to the consolidated group. *See UK Lead Bar 95*, 62 FR at 53311.

We disagree that *OCTG from Italy* and *Seamless Pipe from Italy* establish controlling precedent for the treatment of these equity infusions. In those cases, the Department decided not to initiate on alleged indirect equity infusions. This decision not to initiate cannot be construed as precedent for how the Department treats untied subsidies to parent or holding companies. Moreover, the particular subsidies at issue in this case, equity infusions provided to Finsider and ILVA, were not alleged in *OCTG from Italy* and *Seamless Pipe from Italy. See OCTG from Italy*, 59 FR at 37965 and *Seamless Pipe from Italy*, 59 FR at 37028. Respondent's quotation from the initiation notices in those cases fails to include the primary reason the Department decided not to initiate on an alleged ''indirect'' equity infusion into Dalmine which involved the sale of shares of a partially-owned Dalmine subsidiary company to Dalmine's parent, ILVA. The Department found that there was no basis for the allegation that this acquisition of the subsidiary's shares constituted an ''indirect'' equity infusion. Thus, the allegations in those cases were substantively different than the program under examination in this case which involves the direct purchase of equity by the GOI.

OCTG from Italy and *Seamless Pipe from Italy* also drew a distinction between ILVA as an operating company and Finsider as a holding company, which was somewhat artificial. ILVA was both a holding company and an operating company. The Department has recognized that where a holding/operating company exercises considerable control over its consolidated subsidiaries, the two may be treated as one for purposes of attributing subsidies. *See, e.g., UK Lead Bar 95*, 62 FR at 53316. In these instances, the Department has found that a subsidy provided to one corporate entity can bestow a countervailable benefit upon another entity within the corporate group. *See, e.g., Steel Wire Rod from Canada*, 62 FR at 54978; *Seamless Stainless Steel Hollow Products from Sweden*, 52 FR 5794 (Feb. 26, 1987). In such circumstances, where the parent and its subsidiaries are treated as a single entity, and we determine that the parent has received subsidies not tied to production or sale of a particular product or to sales of products in a particular market (*i.e.*, untied subsidies such as equity infusions), the Department allocates the benefit from such untied subsidies over the total consolidated sales from domestic production. *See GIA*, 58 FR at 37267; *Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France*, 56 FR 6221, 6224–25 (Jan. 27, 1993) (*France Bismuth*). Where the parent and subsidiary are essentially one entity, it is unnecessary to analyze whether the parent has ''passed'' the subsidy to the subsidiary because ''a parent company exercises control over the capital structure and commercial activities of its consolidated subsidiaries.'' *UK Lead Bar 95*, 62 FR at 53311.

Only in the limited circumstances where we determined that there is an insufficient identity of interests between the parent and the subsidiary to warrant treating the entities as one, do we not follow this general practice concerning attribution of untied subsidies. *See, e.g., Ferrosilicon from Venezuela*, 58 FR at 27542. In this case, however, Finsider was a government-owned holding company that held steel producing companies. An equity infusion into Finsider, a holding company with no operations of its own, clearly benefitted the steel production of its subsidiaries. Finsider existed solely to manage the government-owned steel production companies. Thus, there is a clear identity of interest between Finsider and its subsidiaries, including the CAS predecessor companies, which makes it appropriate to attribute the equity infusions to the consolidated holdings of the Finsider Group. *See, e.g., Steel Wire Rod from Canada*, 62 FR at 54978. The same identity of interest existed between ILVA and its consolidated subsidiaries. Thus, the record evidence supports attributing benefits received from equity infusions to the consolidated group holdings of the Finsider Group and the ILVA Group, and no demonstration that untied benefits passed through to the consolidated subsidiaries is required.

CAS also misconstrues the Department's practice with respect to government-owned holding companies. As Petitioners correctly point out, the Department has often attributed untied subsidies provided to a holding company to the consolidated holdings of the company even where the holding company is government-owned. *See, e.g., Steel Wire Rod from Canada*, 62 FR at 54978; *France Bismuth*, 58 FR at 6224–25. One exception to this rule is if the holding company was found to be merely a conduit for channeling the subsidy to a particular subsidiary, in which case the entire subsidy would be attributed to the subsidiary. *See, e.g., Final Affirmative Countervailing Duty Investigation: Certain Carbon Steel Products from Austria*, 50 FR 33369 (Aug. 19, 1985). Thus, the Department normally presumes that the untied subsidy benefits the consolidated operations. The Department does not draw a distinction between private and government-owned holding companies that share an identity or commonality of interest (*e.g.*, are steel producers). On this point, we note that our statements in *UK Lead Bar 96* concerning attribution of subsidies between government-owned holding companies and their related subsidiaries do not require a separate analysis for government-owned holding companies, as CAS advocates. *UK Lead Bar 96* should not be construed as establishing a separate test for determining how subsidies provided to government-owned holding companies should be attributed, but rather as a response to a distinction drawn by the Respondent in *UK Lead Bar 96* concerning our analysis in *Ferrosilicon from Venezuela*, which involves the ''identity of interests'' concept outlined above. *See UK Lead Bar 96*, 63 FR at 18373. As the case law discussed above demonstrates, the Department's past attribution practice has made no distinction based solely on the government ownership of the holding company.

We also disagree with CAS that this policy violates GAAP. As discussed in the Accounting Research Bulletin, provided by CAS in support of its argument, a single enterprise may be organized either as one corporation with branches and divisions, or as a parent company and subsidiaries. The Accounting Research Bulletin goes on to explain that consolidated financial statements recognize that ''* * * boundaries between separate corporate entities must be ignored to report the business carried on by a group of affiliated corporations as the economic and financial whole that it is.'' *See* CAS April 9, 1998 submission at A3. If a subsidiary is consolidated with the parent company for financial reporting purposes, normally it is because the parent holds more than 50 percent of the shares in that company and exercises control over its operations. There are legitimate business reasons why certain subsidiaries are consolidated and certain others are not. The examination of consolidated operations is appropriate in the Department's attribution practice, because it is at this level that a private investor (in the case of an equity infusion) or private lender (in the case of a loan) would normally conduct its analysis of whether an investment in the holding/parent company is a viable risk. As stated in the Accounting Research Bulletin, ''[t]hose who invest in the parent company * * * invest in the whole group, which constitutes the enterprise that is a potential source of cash flow to them as a result of their investment.'' *Id*. In this way, the consolidated companies are tied together and may be appropriately treated as one for purposes of attributing untied subsidies provided to the holding company, including a parent company with its own operations.

Attributing untied subsidies provided to the parent/holding company to the consolidated holdings does not imply a determination of which corporate entity in a group owns specific assets. Attributing untied subsidies provided to the parent/holding company to the consolidated holdings of the corporate group merely assigns the benefit on a pro rata basis across all operations.

We agree that the existence of consolidated financial statements is not the only factor to be considered in determining the proper attribution of an untied subsidy provided to the parent company of a corporate group. For instance, we discussed above instances where a subsidy is channeled through a holding company to a particular subsidiary entity, in which case the subsidy would not automatically be attributed to the entire group. In addition, if there is an insufficient identity of interest among the corporate group, the Department will consider these facts and determine whether it is appropriate to attribute subsidies to the consolidated group holdings, such as in *Ferrosilicon from Venezuela*. The Department will consider other facts relevant to our determination including whether there have been massive and complicated restructurings, in which case we may attribute untied subsidies on an alternative basis other than consolidated sales where appropriate. However, absent that type of fact pattern, it is appropriate to find that the untied subsidy to the holding/parent company benefitted all of its operations including its consolidated operations. CAS's concern that this policy results in inequitable results for consolidated and non-consolidated subsidiaries is misplaced because the appropriate attribution of subsidies is based on the specific facts in a particular case. *UK Lead Bar 96*, 63 FR at 18372.

In this investigation, the Cogne subsidiary companies (the predecessor companies of CAS) were always consolidated with the parent and there are no facts to demonstrate that the equity infusions were channeled to a particular subsidiary (including a Cogne company). Thus, we find that the equity infusions to ILVA and Finsider benefitted all of their consolidated production including, on a pro rata basis, production of subject merchandise. To determine the benefit to CAS, we used the methodology described in the ''Change in Ownership'' section above.

Comment 11: Assumption of Cogne's Liabilities: CAS argues that the assumption of Cogne's liabilities at the time CAS was privatized provided no financial contribution or other countervailable benefit to CAS. CAS argues that Cogne and CAS were separately incorporated entities that maintained separate financial records and did not exchange assets ''without restriction.'' Further, CAS argues that the GOI's ultimate responsibility for any portion of Cogne's liabilities arose by operation of a generally applicable provision of Italian law and not as a result of a Governmental decision. CAS argues that Italian law makes all parent companies responsible for the debts of their wholly-owned subsidiaries. CAS argues that since this provision of Italian law governs all companies, any debt coverage provided to Cogne in connection with the liquidation is not specific.

CAS also argues that the Department's methodology in the preliminary determination overstated any benefit by failing to account for the value of several substantial and *bona fide* assets including inventories, current assets, and bank deposits that remained on Cogne S.p.A. in Liquidazione's books as of CAS's privatization. Respondent argues that there is no reason to subtract some, but not all of the assets from the calculation of net liabilities, citing *Steel Wire Rod from Trinidad and Tobago*. Further, CAS argues that losses are not countervailable benefits.

Petitioners argue that the Department's preliminary determination with respect to this program understated the actual benefit to CAS by focusing solely on losses instead of losses and liabilities. Petitioners argue that the Department's practice supports countervailing both the coverage of losses and the assumption/forgiveness of liabilities as separate subsidy events. Petitioners argue that, if the Department adjusts the liabilities and losses for the assets that remained in the books of Cogne S.p.A., certain assets including the receivables from CAS should not be counted.

Department's Position: The Department properly countervailed benefits provided in connection with the privatization of CAS in the preliminary determination. Before CAS was privatized, its holdings and those of its parent company, Cogne S.p.A., were reorganized, so that Cogne S.p.A. contributed most of the assets and the responsibility for continued operations to CAS, while retaining most of the liabilities. Cogne S.p.A. was placed into liquidation, and was eventually absorbed into ILVA in Liquidazione. However, we have revised our methodology with respect to the calculation of this benefit for this final determination based upon facts discovered at verification. In the preliminary determination, we subtracted the book value of the land and buildings from Cogne S.p.A.'s total liabilities and treated the difference, approximately 411 billion lire, as the amount of liabilities ILVA assumed through this process. However, former ILVA officials reported at verification that the most appropriate figure reflecting the cost of the liabilities/losses remaining in Cogne S.p.A. at the time of CAS's privatization was reported on ILVA S.p.A. in Liquidazione's 1993 financial statement. This figure, a 253 billion lire fund established to cover liabilities and losses associated with Cogne S.p.A.'s liquidation, represents the total cost incurred by ILVA at that time. The cost to ILVA reflects the value of the liabilities and losses which were assumed by the GOI as part of the privatization process, and as such, constitute the benefit to CAS in connection with its privatization, and the liquidation of Cogne S.p.A. as of year-end 1993. The assumption of the liabilities/losses by ILVA and the GOI through this process constitutes a benefit to CAS because it was relieved of financial obligations for which it would otherwise have been liable. Using this figure also removes the problem of which assets and liabilities should be included in the calculation of the net liability as of year-end 1993, and whether losses should also be included in the calculation. Accordingly, the interested parties' arguments concerning the specific assets and liabilities that should be included in the calculation of the benefit are moot. Notwithstanding this change in our calculation, we continue to find that the assumption and/or coverage of liabilities and losses are countervailable subsidies. As we explained in the *Department's Position* on *Comment 9* above, the assumption of losses provides the equivalent of a direct transfer of funds that confers a benefit, which is countervailable under section 771(5) of the Act.

We agree with CAS's statement that assets and liabilities did not flow without restriction between Cogne and CAS. The companies were separately incorporated. Once the capital contribution was made at the end of 1992, nearly all of the productive assets of Cogne were transferred to CAS in exchange for shares and CAS assumed the production activities from that date. The transfers between the two companies after that date were made at book value. By the end, CAS held all assets with value. However, we note that this fact is not particularly relevant to whether or not a subsidy was provided in connection with the privatization of CAS and liquidation of Cogne because our finding is based on the total amount that ILVA and the GOI was forced to cover as of the time of privatization and is not connected to individual transfers between the two companies.

We do not find CAS's argument pertaining to the sole shareholder provision of Italian law persuasive. The liquidation of Cogne S.p.A., including the debt forgiveness/coverage that was provided, was done in the context of a massive restructuring/privatization plan undertaken by the GOI and approved and monitored by the EU. The costs of the liquidation of Cogne S.p.A. were included in the total aid package approved, for some 10 trillion lire. Thus, the benefits were provided in the context of a massive state-aid package designed to allow the GOI to rationalize and privatize its steel holdings. CAS mischaracterizes the liquidation of Cogne S.p.A. as the normal application of a provision of Italian law. As Cogne S.p.A.'s liquidation was part of this extensive state-aid package, the record evidence demonstrates that the liquidation is not a normal occurrence. Finally, CAS's argument assumes that if a private company owned Cogne S.p.A., it would have allowed the company's financial condition to deteriorate to the level it did. This argument is without merit. There is no basis for concluding that a private owner would have allowed such an unprofitable operation—one that the EU recognized as uneconomical in 1989—to continue operating for so long. *See* GOI December 2, 1997, questionnaire response, public version on file in the CRU. This determination is consistent with our past practice, *see, e.g., Steel Wire Rod from Trinidad and Tobago.*

Comment 12: Cogne's Liquidation Extinguishes Prior Subsidies: CAS argues that Cogne's liquidation extinguished all pre-1993 subsidies otherwise attributable to CAS. CAS states that its shares were sold to private investors in the course of the liquidation proceeding, and it is the Department's long-established practice to consider that any bankruptcy-type proceeding extinguishes all pre-bankruptcy subsidies, citing *Certain Stainless Steel Products from Spain* 47 FR 51453 (Nov. 15, 1982) (*Stainless Steel Products from Spain*) in which benefits provided prior to a receivership plan were found to be extinguished; *Certain Textile Mill Products and Apparel from Colombia,* 52 FR 13272 (April 22, 1987) (*Apparel from Colombia*) in which the suspension of interest payment obligations on loans was found not to be a subsidy because it was done through bankruptcy laws; *Salmon from Norway,* 56 FR 7675 (Feb. 25, 1991) in which principal/interest suspensions and loan write offs occurred through bankruptcy proceedings and were not found to be subsidies; *Pads for Woodwind Instrument Keys from Italy,* 49 FR 17791 (April 25, 1984) (*Instrument Key Pads from Italy*) in which a provincial program that allowed companies to recover from bankruptcy was found not to be specific. CAS also cites *OCTG from Canada,* 51 FR 15037 (April 22, 1986) where the Department found that subsidies that were provided to one company did not pass through to the purchaser of that company's assets. CAS argues that the Department's practice with respect to bankruptcy-type proceedings does not require that the operation be closed in order for the pre-existing subsidies to be extinguished. CAS argues that this position would be inconsistent with commercial considerations and contrary to the intent of the countervailing duty law because it would require operations to be closed in order for subsidies to be extinguished when an on-going operation can normally obtain a higher return on its sale.

Petitioners argue that the liquidation of Cogne S.p.A. is not relevant to the Department's determination of whether or not there is a subsidy. Petitioners argue that the sale of the CAS shares did not arise out of the liquidation proceeding, but was a premeditated decision by the GOI to continue the operation of the facility. Petitioners argue that the GOI did not try to get the best possible price for the shares as the real price was the net value of the company minus the restructuring fund, and that the GOI actually paid the new owners to purchase the company. Petitioners further argue that the analysis provided by Respondents related to bankruptcy proceedings relates solely to subsidies provided in the context of a bankruptcy proceeding. Petitioners state that to find no subsidy benefits to the new company would invite circumvention of the countervailing duty law because governments could simply create new entities and leave the debts in the old companies. Petitioners cite *German Wire Rod* to support their position that the Department has determined that bankruptcy proceedings do not impact previously bestowed subsidies if unaffected through the bankruptcy process.

Department's Position: We agree with Petitioners that the facts related to the liquidation of Cogne S.p.A. are not relevant to our determination as to the existence and continuation of benefits from previously bestowed subsidies. As discussed below, we find no factual distinctions which render our standard privatization methodology inappropriate. Moreover, the cases which CAS cites are distinguishable from the facts surrounding CAS's privatization and do not reflect a policy with respect to the forgiveness of debt provided to a government-owned company.

In *Apparel from Colombia, Stainless Steel Products from Spain* and *Salmon from Norway,* the Department found that the forgiveness of obligations or beneficial repayment terms were not countervailable because the forgiveness was done through a bankruptcy proceeding in which the government acted in a manner consistent with commercial banks. In those cases, the benefit at issue was provided through the bankruptcy proceeding itself. *See Apparel from Colombia,* 52 FR at 13277; *Stainless Steel Products from Spain,* 47 FR at 51442, and *Salmon from Norway,* 56 FR at 7685. In *Instrument Key Pads from Italy,* the issue before the Department was the specificity of a government program which provided financing to firms facing financial difficulties. The existence of the bankruptcy proceeding did not lead to the noncountervailability finding, but rather the Department determined that the law in question was not limited to an enterprise or industry or group of enterprises or industries. *Instrument Key Pads from Italy,* 49 FR at 17793–94.

Despite these factual distinctions, to the extent that the Department's analysis in these cases may be interpreted as finding the bankruptcy proceedings as extinguishing prior subsidies, that interpretation is inapplicable to this investigation. In *OCTG from Canada,* the Department noted the arm's length nature of the change in ownership transaction. *OCTG from Canada,* 51 FR at 15042. In *Certain Steel Products from Spain,* the Department suggested that pre-receivership benefits were extinguished when these debts became consolidated in the bankruptcy proceeding. *Certain Steel Products from Spain,* 47 FR at 51443. However, in adopting the current privatization methodology, the Department specifically disavowed any prior decisions in conflict with its revised approach. The Department stated: ''[t]o the extent that the approach adopted here arguably is inconsistent with prior decisions, such decisions are superseded by our conclusions here.'' *GIA,* 58 FR at 47263. Thus, these pre-1993 cases are not controlling precedent on the Department's current privatization methodology, which does not find extinguishment based upon bankruptcy proceedings. *See, e.g., German Wire Rod,* 62 FR at 54992.

None of these case precedents require a determination by the Department that the liquidation proceeding extinguished subsidies or prevented subsidies from being passed through to CAS. In this investigation we are not examining an instance of bankruptcy laws providing beneficial repayment terms to the company or whether the government was acting as a commercial entity as was the case in the first three cases. Although Cogne S.p.A. could not have covered its obligations on its own, the company was not placed into bankruptcy, but into liquidation. Further, none of the payment terms/ obligations were reduced as a result of the liquidation process—they were simply assumed by ILVA and later the GOI. In addition, specificity, which was the issue in *Instrument Key Pads from Italy,* is not an issue in the instant investigation. The debt forgiveness provided to CAS was part of a 10 trillion lire state aid package for the liquidation and privatization of the government-owned steel companies in Italy.

Further, *OCTG from Canada* involved the sale of physical assets at an appraised value, not the sale of an on-going concern. CAS argues that the purchasers of CAS bought only assets from Cogne S.p.A., not Cogne S.p.A. itself. While it is true that they did not purchase Cogne S.p.A. itself, what they got was even better—all of the productive assets of Cogne S.p.A. (which had been transferred to CAS), and very little of the company's extensive debt and loss burden. At no time did operations cease, they were simply transferred from one company to another. Thus, this is not the case of pieces of equipment being auctioned to the highest bidder—CAS was sold as an on-going concern with all of the productive assets and few of the liabilities and losses associated with that operation.

In addition, the other cases cited by CAS involved whether the actions of the government provided a countervailable subsidy. In *Certain Stainless Products from Spain,* one Respondent went into bankruptcy, a receivership plan was agreed to by the court, and the company's creditors established payment terms for the company's debt. The company's debt was comprised of loans from suppliers, short- and long-term debt from commercial banks and short-term loans provided by the government. Thus, in agreeing to the court approved debt restructuring plan, the government was acting in the same manner as commercial bankers and suppliers. We further noted in that case that the short-term loans provided to the company by the government would have been paid off within a year of their issuance but for the declaration of bankruptcy. Similarly in *Salmon from Norway,* the issue was the actions taken by the government with respect to outstanding loan payments due them from commercial fish farmers. For fish farmers facing financial difficulties, the government deferred interest and principal payments. When it became apparent that the loans would never be repaid, the government initiated a legal proceeding to declare the company bankrupt and to seize the company's assets. These assets were sold at a public auction and losses which could not be recovered were then written off. We found that these actions by the government were not countervailable because the government did not act ''in a manner inconsistent with commercial considerations.''

Thus, the cases cited by CAS fail to support CAS's argument that Cogne's liquidation extinguished its pre-1993 subsidies. We further note that the cases cited by CAS address government actions with respect to private not government-owned companies. Facts which may be present with respect to bankruptcies of government-owned companies raise issues that are not present in the bankruptcies of private companies. For example, in the instant investigation, an Italian commercial banker stated that in the event that a government-owned company is unable to service its loan payments, it is assumed that the government will intervene and make the remaining payments. *See* Commercial Experts Report at 3. In addition, during our verification of the CAS response, we asked the bankruptcy consultant hired by CAS whether he was aware of any actual bankruptcy or liquidation of a state-owned company where creditors were left without full repayment by the government. The consultant stated that he was not aware of any such instances. *See* CAS Verification Report at 9. Thus, the record evidence in this case indicates that the treatment of bankrupt private companies does not provide an appropriate basis for the treatment of bankrupt government-owned companies or for bankruptcies where the government has interfered. Therefore, even if the cases cited by CAS were relevant to its debt forgiveness and privatization, those cases would not govern the Department's analysis of the issues present in this investigation because those cases failed to address the unique circumstances of a bankrupt government-owned company or a company operating in an environment where a government has interfered in normal commercial banking operations.

Comment 13: Privatization Extinguishes Subsidies: CAS argues that its 1993 privatization also extinguished all pre-privatization subsidies. CAS states that the Department must consider the specific circumstances of CAS's privatization in determinating whether pre-existing subsidies survived the privatization. CAS states that the transfer of a productive unit to CAS by Cogne at its full appraised value extinguished pre-existing subsidies. CAS argues that the Court's rationale in *Inland Steel Bar Co. v. United States,* 960 F. Supp. 307 (CIT 1997) (*Inland Steel*) requires a finding that there is no pass through in this case, when a company transfers a productive unit because a subsidy may only be received by a legal entity. CAS further states that Cogne achieved not only an arm's length price in the privatization of CAS, but the best possible price, as required by the EU rules on privatization. CAS states that it was sold for the best possible price and, thus, received no competitive benefit from the transaction.

CAS argues that the attribution of pre-privatization subsidies to CAS would violate the Department's obligation to allocate non-recurring subsidies over a ''reasonable period'' based on the ''subsidy's commercial and competitive benefit.'' CAS states that the only ''reasonable period'' for allocation would end in 1993 because of the privatization of the company. CAS states that by allocating through the AUL method, the Department recognizes that allocation is like depreciation, and thus must be discontinued when an operation is closed or abandoned. CAS further argues that Congress imposed no single, inflexible formula on the Department's allocation of non-recurring subsidies, and that it would be unreasonable and arbitrary to allocate benefits over the average useful life of CAS's assets because it receives no commercial or competitive benefit from pre-privatization subsidies.

CAS claims that a policy mandating no extinguishment of pre-privatization subsidies would produce inconsistent and absurd results and compares the Department's practice with respect to upstream subsidies to privatization to demonstrate this point. CAS hypothesizes two scenarios, one in which an input is purchased for the best possible price from a third party in which an upstream analysis would find no subsidy and one in which the input is purchased from a privatization, in which the subsidy would pass through. CAS states that for that reason, the conclusions of the privatization analysis are absurd.

Petitioners argue that CAS's arguments merely demonstrate that the company was sold at arms-length, which does not require the Department to find that no subsidies passed through the privatization.

Department's Position: We agree with Petitioners. CAS's argument merely attempts to demonstrate that the sale of the company was done at arm's length, which does not demonstrate that previous subsidies were extinguished. Section 771(5)(F) of the Act states that the change in ownership of the productive assets of a foreign enterprise does not require an automatic finding of no pass through even if accomplished through an arm's length transaction. The SAA directs the Department to exercise its discretion in determining whether a privatization eliminates prior subsidies by considering the particular facts of each case. SAA at 928. In this instance, consistent with the statute and SAA, we have examined the facts of this case and determined it is appropriate to allocate subsidies to CAS using the Department's standard privatization formula.

First, CAS draws an artificial distinction between the ''best possible price'' and the ''arm's length'' price. The commercial nature of an arm's length transaction would almost always require that the best possible price be paid because the seller has no incentive to accept anything less. Nonetheless, the record evidence does not support CAS's statement that it was sold for ''the best possible price.'' Although CAS was sold pursuant to an open bidding procedure that involved several bidders and multiple rounds of offers, the record demonstrates that the purchase price was not the focus of negotiations; all bidders agreed to pay the net worth of the firm. The actual linchpin of the sale was the value of the restructuring fund the purchaser would receive upon buying CAS's productive assets. (Given the proprietary nature of the bidding documents, the specific details surrounding the negotiations for the sale of CAS cannot be addressed in this public notice). The restructuring fund was necessary because of the company's history of poor performance. Thus, we find no distinguishing facts surrounding CAS's purchase price to render application of the Department's standard methodology inappropriate. We also note that we have appealed the decision to the Federal Circuit. Therefore, *Inland Steel* does not mandate a finding of no pass through in this investigation. Rather, we continue to follow the methodology upheld by the Federal Circuit in *Saarstahl* and *British Steel.*

Second, we disagree with CAS's arguments concerning the AUL period and privatization for several reasons. There is no inconsistency between the AUL period and the allocation of subsidies that passed through to CAS. The AUL represents a reasonable period of years over which a non-recurring subsidy benefits production. As we explained in the *GIA,* ''the length of the benefit stream is not determined by how the subsidy is used.'' *GIA,* 58 FR at 37229. Altering the AUL period based on either use or change in ownership of the productive assets would be tantamount to tracing the effect of the non-recurring subsidy which is clearly not required by the CVD law. *See* section 771(5)(C) of the Act. Altering the AUL period to account for a change in ownership would result in an automatic finding of no pass through contrary to section 771(5)(F) of the Act, the SAA, and practice.

Third, CAS argues that the use of an allocation period is similar to depreciation and thus must end when enterprises are discontinued or abandoned. CAS never permanently ceased operations. The sale of an on-going concern is not similar to discarding a piece of equipment. CAS attempts to draw a parallel between depreciating an asset that is abandoned and the allocation of a subsidy through a change in ownership where a parallel simply does not exist. We note that there are no facts on the record of this case that would demonstrate that the allocation period we have chosen is unreasonable.

Finally, CAS's argument comparing the Department's privatization and upstream subsidy practices disregards the distinct analyses performed under these methodologies. An upstream subsidy analysis concerns subsidies provided to an input which is incorporated into a downstream product. The Department is seeking to determine whether the subsidy provided to the input can be attributable to the production of the subject merchandise. *See* 771A of the Act. In the privatization analysis, the Department has already made a determination that the subject merchandise itself has benefitted from countervailable subsidies, and the Department is seeking to determine whether subsidies previously bestowed to the production of the subject merchandise pass through to the new owner.

The Department does not trace the competitive benefit of subsidies provided to subject merchandise. *See* 771(C) of the Act, *GIA* 58 FR at 37260–61. However, the competitive benefit analysis performed under the upstream subsidy analysis is a narrow exception mandated by the statute, which codifies the Department's chosen methodology to address the particular factual circumstances of subsidized inputs used in the production of the subject merchandise. Given the distinct factual circumstances addressed by the privatization and upstream subsidy analyses, we see no reason to change our established privatization practice which is consistent with the statute, the We also disagree with CAS that this policy violates GAAP. As discussed in the Accounting Research Bulletin, provided by CAS in support of its argument, a single enterprise may be organized either as one corporation with branches and divisions, or as a parent company and subsidiaries. The Accounting Research Bulletin goes on to explain that consolidated financial statements recognize that ''* * * boundaries between separate corporate entities must be ignored to report the business carried on by a group of affiliated corporations as the economic and financial whole that it is.'' *See* CAS April 9, 1998 submission at A3. If a subsidiary is consolidated with the parent company for financial reporting purposes, normally it is because the parent holds more than 50 percent of the shares in that company and exercises control over its operations. If a parent company prepares consolidated financial statements, there are legitimate reasons why certain subsidiaries are consolidated and certain are not—*i.e.*, level of participation and control in the subsidiary. The examination of consolidated operations is appropriate in the Department's attribution practice, because it is at this level that a private investor (in the case of an equity infusion) or private lender (in the case of a loan) would normally conduct its analysis of whether an investment in the holding/parent company is a viable risk. As stated in the Accounting Research Bulletin, ''[t]hose who invest in the parent company * * * invest in the whole group which constitutes the enterprise that is a potential source of cash flow to them as a result of their investment.'' *Id.* In this way, the consolidated companies are tied together and may be appropriately treated as one for purposes of attributing untied subsidies provided to the holding company, including a parent company with its own operations. SAA, and has been upheld by the Federal Circuit on two occasions. *See, e.g., Saarstahl AG* v. *United States,* 78 F.3d 1539 (Fed. Cir. 1996); *British Steel plc* v. *United States,* 127 F.3d 1471 (Fed. Cir. 1997).

Comment 14: Restructuring Fund Provided to CAS is a Subsidy:

Petitioners argue that the restructuring fund given to CAS as part of the 1993 pre-privatization aid program provided an additional countervailable benefit that should be reflected in the final analysis. Petitioners contend that the fact that the negotiations for the sale of the company centered on how large the restructuring fund would be shows that it was necessary to ''sweeten the pot'' in order to sell the company. Further, Petitioners contend that even if commercial companies may sometimes provide this type of restructuring fund in order to sell a subsidiary company, the provision of such a fund by a government entity remains a countervailable subsidy. Petitioners state that the purpose of the fund was to sell the newly-created company by covering bad will, not to reduce the liabilities left in Cogne S.p.A., and is therefore, a separate subsidy event.

CAS states that the restructuring fund conferred no separate, countervailable benefit to the new company. CAS cites *OCTG from Canada* where the Department decided that special financing arrangements were consistent with commercial considerations because it allowed the government to recover some of the owed funds. CAS states that the restructuring fund is similar to a special financing arrangement and that private companies might provide this type of fund because it would be cheaper than the costs that would be incurred closing the facility. CAS states that the restructuring fund allowed for the best possible price for the sale of the shares, and thus was consistent with commercial considerations.

Department's Position: We are not countervailing the restructuring fund as a separate subsidy event because the amount of the restructuring fund was included in the benefit from the pre-privatization assistance and debt forgiveness program discussed above. While our calculation of the benefit from that program has changed slightly from what was used in the preliminary determination, it represents the total cost associated with the liquidation of Cogne as of year-end 1993. That cost was made up, in large part, of the liabilities in Cogne S.p.A. in Liquidazione as of that date, which included the cost of the restructuring fund. If Cogne S.p.A. had not given CAS a restructuring fund, the costs associated with its liquidation would have been approximately 148 billion lire, instead of the 253 billion that included the restructuring fund. Thus, the restructuring fund has been appropriately captured in calculating the benefit provided at the time of the privatization of CAS. Because the benefit from the pre-privatization assistance and debt forgiveness program includes any benefit provided by the restructuring fund, there is no need to examine the restructuring fund separately.

Comment 15: Price Paid for CAS Should be Adjusted: Petitioners argue that the price paid for CAS in 1993 should be reduced by the amount deducted from the purchase price for environmental damage when factored into the privatization calculation.

CAS argues that the deduction was the result of an obligation Cogne S.p.A. had with respect to clean up of the site that it did not carry out. This obligation was spelled out in the March 17, 1994, contract which also specified that CAS would receive a 2 billion lire payment to cover these costs in the event that Cogne S.p.A. did not undertake the clean up. Thus, the amount was deducted from the subsequent payments of the purchase price.

Department's Position: We disagree with Petitioners. We do not consider this post-sale agreement between CAS and ILVA relevant to the determination of the actual purchase price paid for the company, which was agreed upon in the March 7, 1994 contract and is the price factored into the privatization calculation. The information on the record indicates that this 2 billion lire payment was for an obligation not related to the purchase price. This obligation and payment were agreed to March 17, 1994, after the date of the sales contract. Therefore, we have not made an adjustment for purposes of this final determination.

Comment 16: Specificity of CAS Lease and Adjustment for Extraordinary Maintenance: CAS argues that the Aosta lease is not specific within the meaning of the law. CAS states that the Region's rental terms are generally available and have been used by numerous other entities. Further, CAS argues that the rental terms provided to other entities are the same or better than those provided to CAS.

CAS also argues that the Department overstated the benefit to CAS from the lease. CAS argues that in determining whether CAS received a countervailable benefit, the Department should consider the lease and provincial loans to be one program, and compare the benchmark rates to the sum of CAS's base rent, interest, and payments, plus its cost of extraordinary maintenance expenses and the extraordinary cost of moving its plant to the premises subject to the lease. CAS further states that there is no evidence on the record that would support a finding that the lease confers a countervailable benefit on CAS.

Petitioners argue that verification confirms the Department's preliminary finding that the CAS lease provides a countervailable benefit. Petitioners further argue that the Department's benchmark for evaluating the rate of return on the investment understates the actual benefit to CAS and that the Department, instead, should use the interest rate for a long-term loan in calculating the benefit. Petitioners argue that the Department should not make an adjustment for extraordinary maintenance costs in measuring the benefit from the lease. Petitioners also argue that the transfer loans and lease should be treated as separate programs as they were provided under separate laws. Petitioners also state that the 30-year length of the lease is unusual based on the facts of the record.

CAS counters that the size of the property is irrelevant to the determination of whether the lease provides a subsidy. Further, CAS argues that the 30-year term of the lease is also irrelevant in the determination of whether the lease provides a subsidy. CAS states that the fact that the regional government is interested in promoting employment has no relevance in the determination of whether the lease provides a countervailable benefit. CAS further argues that the maximum rate of return benchmark that the Department may use in evaluating whether the lease provides a benefit is the 5.7 percent figure suggested by the real estate analysts. Respondent argues that the 5.7 percent rate is lower than that of commercial lending rates because of the effect of inflation on property values. CAS also states that Petitioners' statement that the facts demonstrate that it would be ''unusual'' for a landlord to pay for extraordinary maintenance is inaccurate because this assignment of obligation is required by law.

Department's Position: We agree with Respondent, in part, and Petitioners, in part. The Department has recognized that where the government holds many leases with different parties, the terms of the lease must be analyzed to determine whether the lease is specific within the meaning of the Act. *See German Wire Rod*, 62 FR at 54994 and *Steel Wire Rod from Trinidad and Tobago*, 62 FR at 55008. The CAS lease has a different length, different terms, and the property is of a much larger size than other leases with the Region. Further, the CAS lease is contractually different than the other leases because it is between Structure and CAS instead of being held directly by the Region. The lease was the subject of almost year-long negotiations between the two parties and reflects the individual needs of each party in this particular landlord-tenant relationship. These specific circumstances demonstrate that the CAS lease is distinguishable from other leases negotiated and entered into by the Region. Contrary to CAS's arguments otherwise, the size of the property and the length of the lease are significant factors in determining whether the lease was selectively provided to CAS. On this basis, we determine that the terms of this lease are unique to CAS, which makes the provision of the CAS lease specific under section 771(5A)(D)(i) of the Act.

We agree with Petitioners that it is inappropriate to consider the lease and loans as a single program, because the measures were authorized under separate laws. Thus, CAS's suggested methodology of comparing the benchmark to the sum of CAS's rent, interest and payments for the loan, cost of extraordinary maintenance, and cost of moving the plant is inappropriate. Thus, we have examined the lease and loan programs separately.

As discussed above, we do not consider the loan to be an indemnity. The Region and CAS agreed from the beginning, as evidenced by the Protocols of Agreement, that CAS would move its property. Thus, we must only consider whether the provision of the loan is specific and whether it provides a benefit within the meaning of the Act. Accounting for CAS's moving expenses would contravene the Department's long-standing policy of not examining the subsequent use or effect of subsidies. This policy is articulated at the *GIA* at 37261, ''[i]n practice this means, for example, if a government were to provide a specific producer with a smokestack scrubber in order to reduce air pollution, the Department would countervail the amount that the company would have had to pay on the market, notwithstanding that the scrubber may actually reduce the company's output or raise its cost of production.'' Thus, we also have not included the expenses incurred from relocating the plant in the calculation of the benefit from the loan.

We have not included the cost of extraordinary maintenance in the calculation of the benefit from the lease. Petitioners and Respondent have both provided arguments as to whether the record evidence shows that the assignment of the extraordinary maintenance obligation to the tenant is unusual or usual, respectively. However, the record evidence demonstrates that the assignment of terms such as extraordinary maintenance is negotiable under Italian law. In a commercial transaction, the long-term cost of extraordinary maintenance would be factored into the negotiated rate. The selected benchmark, the average rate of return, accounts for such particularities in the negotiated rate.

As discussed in the lease section above, we have modified our calculation of the benchmark from the preliminary determination. Based on information collected at verification from a commercial real estate company, we believe that the appropriate rate of return is 5.7 percent. We consider this rate to reflect an average rate of return for leases of different sizes, lengths, terms, and locations in Italy. As such, it is a fair reflection of the normal commercial value and does not require highly complex and speculative adjustments for maintenance, depreciation, or increased land values over time. Thus, we disagree with Petitioners that we should use a long-term commercial loan rate to calculate the benefit.

We agree with Respondents that the 5.7 percent figure is the maximum rate of return benchmark appropriate for this calculation without undertaking complex and speculative adjustments. However, we disagree that the record contains no evidence that would support a finding that the lease confers a countervailable benefit to CAS. We verified that in Italy the commercial practice with respect to maintenance terms is negotiable and that the average rate of return is 5.7 percent. We compared the rate of return on the CAS lease (3.5 percent) to the average rate of return in Italy and calculated the benefit based on the difference.

In sum, in our review of the terms of the lease, we found that the Region's interest is different from that of commercial landlords. We compared the rate of return under the lease to the average rate of return on commercial leased property and found that the Region of Valle d'Aosta leases the property for less than adequate remuneration. We also found that the lease is specific within the meaning of the Act. Therefore, we found that the lease provides a countervailable subsidy to CAS.

Comment 17: Benefit from Waste Plant: Petitioners argue that CAS is receiving a benefit from the waste plant. Petitioners contend that the waste plant will be completed in a matter of months. Petitioners state that CAS is incurring costs for waste disposal and there is no evidence that CAS is actually paying them. Thus, a service is being provided by the regional government free of charge. CAS states that the waste plant provides no benefit to CAS because construction has not even begun and the plant is not operational. Further, CAS states that it pays for its own waste storage in the interim, and has received no funds from the Region to date for that purpose.

Department's Position: We agree with CAS. The Department verified that this program does not yet exist because the Region has not yet started construction of the waste plant, and therefore, CAS is not benefitting from the provision of waste disposal services. CAS has not received any payments from the Region for waste disposal. Therefore, there is no benefit during the POI. However, in the event this investigation results in a countervailing duty order we will continue to review this allegation in any subsequent administrative review to determine whether a benefit is provided to CAS through the provision of waste disposal services for less than adequate remuneration.

Comment 18: Program Discovered at Verification: Petitioners argue that the Department should countervail assistance received by CAS under law 10/91 because CAS did not report the receipt of benefits under this law in the questionnaire responses and the Department should use ''facts available.'' Petitioners also argue that even if the Department does not rely on ''facts available'' to make a determination, the law is specific because it limits assistance to large consumers of electricity who are few in number.

CAS argues that the law is available to companies in many different industries and that the company did not report the program because it did not meet the definition of countervailable subsidy.

Department's Position: The Department discovered the existence of this program during verification and determined that there was insufficient time to consider the countervailability of the program for this final determination. Therefore, pursuant to section 351.311(c) of the Department's regulations, we are deferring examination of Law 10/91. If the Commission's injury determination is affirmative and this investigation becomes an order and an administrative review is requested, we will examine this law during the course of that segment of the proceeding to determine whether the program is countervailable.

Comment 19: Countervailability of Law 227/77: Valbruna/Bolzano argues that export loans given under Law 227/77 are covered by an OECD agreement which requires that export credits be provided at market conditions. Further, Valbruna/Bolzano states that the

European Council expanded the applicability of the OECD guidelines to export credits with terms between 18 and 24 months. Thus, Respondent argues that the fixed interest rate provided under the program does not represent a countervailable subsidy. Valbruna/Bolzano states that the allowable rate under the program is a monthly average interbank interest rate published by the GOI and is thus a market rate. If the Department finds a countervailable benefit, the calculation of the benefit should be based on the spread above the interbank rate. Valbruna/Bolzano states that it normally pays LIBOR plus a spread for short term loans and we should compare the rate provided under the program to the rate plus the normal spread in order to calculate the benefit. Further Respondent argues that there is no other benefit besides the lack of a commercial spread and that the details of the agreement between the Mediocredito and San Paolo Bank do not benefit Valbruna.

Petitioners argue that the Department's preliminary determination correctly determined that the program is countervailable and correctly determined the benefit. Petitioners state that the Department's finding was based on the fact that the applicant must have obtained the loan before applying to the Mediocredito for the interest contribution which was confirmed at verification. Thus, the Department must continue to treat the interest contributions as grants.

Department's Response: We agree, in part, with Petitioners. The OECD Guidelines apply to export credits with terms of two years or more. The Valmix loan under which the Mediocredito made interest contributions has a term of 18 months and thus, does not fall under the OECD Guidelines. Therefore, we need not examine the applicability of the item (k) exemption. *See Carbon Steel Products from Austria,* 50 FR at 33374. Our review of the European Council's decision cited by CAS indicates that this decision implemented the OECD Guidelines in 1992 but does not support the Respondent's claim that the decision extended the Guidelines' applicability to 18-month loans. On this basis, we continue to find that interest contributions made under Law 227/77 are countervailable.

At verification, we learned that it was understood by all parties that the Valmix application for assistance under the program would be approved at the time that the contract between Valmix and the commercial bank was signed. Therefore, in accordance with the Department's practice, we consider the interest contributions to provide reduced-rate loans. *See, e.g., Certain Steel from Italy,* 58 FR at 37332. However, the GOI explained that in the event that the application was rejected, then the company would become responsible for the full rate guaranteed to the commercial bank. Valbruna's claim that the contract does not specify these terms is not persuasive. The payment arrangement between the lending bank and the Mediocredito provided a benefit to Valmix because, absent approval of the application, Valmix would be responsible for the full rate guaranteed to the commercial bank. *See* GOI Questionnaire Response dated February 13, 1998, public version on file in the CRU. Respondent's claim that this arrangement is merely a management decision by the Mediocredito is unpersuasive because these interest contributions are the incentives provided under Law 227/77 to offset the buyer's cost of credit in export financing arrangements. Thus, Valmix receives the benefit of a fixed, low-interest rate loan because the commercial lender is guaranteed payments for any shortfall between the fixed rate and the variable market rate.

We agree with Respondent that the interest contributions should be treated as loans. However, we disagree with Respondent's proposal that this benefit should be measured based upon the difference between Valbruna's payments under the loan and the spread above the interbank rate. In the absence of the Mediocredito's intervention, Valbruna would be responsible for the full variable rate to the commercial bank. Thus, we compared what Valmix paid under the fixed program rate and what it would have paid for the loan absent the interest contributions and found that the program provided a countervailable benefit.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with the government and company officials, and examination of relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in public version form in the CRU.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual subsidy rate for each company investigated. For companies not investigated, we have determined an all-others rate by weighting individual company subsidy rates by each company's exports of the subject merchandise to the United States.

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of SSWR which were entered, or withdrawn from warehouse, for consumption on or after January 7, 1998, the date of the publication of our preliminary determination in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to terminate the suspension of liquidation for merchandise entered on or after May 7, 1998, but to continue the suspension of liquidation of entries made between January 7, 1998, and May 6, 1998. We will reinstate suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled:

AD VALOREM RATE

Producer/exporter	Net subsidy rate (percent)
CAS	22.2
Valbruna/Bolzano	1.28
All Others	13.85

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our field 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 for AD/CVD Enforcement, Group II. If the ITC determines that material injury, or threat of material injury, does not exists, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act.

Dated: July 20, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–20015 Filed 7–28–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Tuesday, August 11, 1998. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the stage I process and selection of applicants for the consensus stage of the evaluation. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene August 11, 1998, at 8:00 a.m. and adjourn at 5:00 p.m. on August 11, 1998. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administrative Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 22, 1998, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409. The meeting which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: July 23, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–20252 Filed 7–28–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Meeting to Discuss an Opportunity To Join a Cooperative Research and Development Consortium on Sprinkler System Performance Prediction

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a meeting on September 1, 1998 to discuss the possibility of setting up a cooperative research consortium on Sprinkler System Performance Prediction. The goal of the consortium is to produce with industrial partners a fire simulation system capable of quantifying the performance of existing and planned fire sprinkler systems in industrial spaces.

DATES: The meeting will take place on September 1, 1998 at 9:00 a.m. Interested parties should contact NIST to confirm their interest at the address, telephone number or FAX number shown below.

ADDRESSES: The meeting will take place in Polymers Building (224), Room B245, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001.

FOR FURTHER INFORMATION CONTACT: Dr. Glenn P. Forney, Chemistry Building (222), Room A255, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001. Telephone: 301–975–2313; FAX: 301–975–4052; e-mail: gforney@nist.gov.

SUPPLEMENTARY INFORMATION: Any program undertaken will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Public Law 99–502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment, and facilities but no funds to the cooperative research program. This is not a grant program.

The R&D staff of each industrial partner in the Consortium will be able to interact with NIST researchers to produce with industrial partners a fire simulation system capable of quantifying the performance of existing and planned fire sprinkler systems in industrial spaces. The system consists of a computational firm model, sprinkler hardware measurements, and methods to exchange input data and calculated results to facilitate its use by industry.

Dated: July 23, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–20251 Filed 7–28–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041598A]

Taking and Importing of Marine Mammals; Offshore Seismic Activities in the Beaufort Sea

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

ACTION: Notice of withdrawal of an application for an incidental harassment authorization.

SUMMARY: On July 6, 1998, NMFS was notified by BP Exploration (Alaska) (BPXA) that BPXA would not be conducting seismic surveys for oil and gas exploration in the U.S. Beaufort Sea during the 1998 open-water season. As a result, BPXA has requested NMFS to withdraw its application for an incidental harassment authorization under the Marine Mammal Protection Act (MMPA) and, by this document, NMFS is noting that withdrawal.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, Brad Smith, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

Application

On March 26, 1998, NMFS received an application from BPXA requesting a 1-year renewal of its authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in the Beaufort Sea between Harrison Bay and Camden Bay/Flaxman Island, AK. Weather permitting, the survey was expected to take place between approximately July 1 and October 20, 1998. A detailed description of the work proposed for 1998 is contained in the application and need not be repeated here. A notice of receipt of the application and proposed authorization was published on May 6, 1998 (63 FR 25015), and a 30-day public comment period was provided on the application and proposed authorization. Several comments were received during the 30-day comment period. While those comments no longer require response by NMFS, because similar comments were submitted during the review and comment period for an IHA application by Western Geophysical for seismic operations in the U.S. Beaufort Sea, readers are encouraged to review the authorization notice for that applicant elsewhere in this issue of the **Federal Register**.

Dated: July 22, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–20279 Filed 7-28-98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.061498A]

Taking and Importing of Marine Mammals; Offshore Seismic Activities in the Beaufort Sea

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of bowhead whales and other marine mammals by harassment incidental to conducting seismic surveys in the Western Beaufort Sea in state and federal waters has been issued to Western Geophysical/Western Atlas International of Houston, Texas (Western Geophysical).

DATES: Effective from July 23, 1998, until November 1, 1998, unless extended.

ADDRESSES: The application, authorization, monitoring plan, environmental assessment (EA), and a list of references used in this document are available by writing to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, Brad Smith, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations under section 101(a)(5)(D) of the MMPA in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to that document.

Summary of Request

On April 15, 1998, NMFS received an application from Western Geophysical requesting an authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in the Beaufort Sea between Harrison Bay and Flaxman Island, AK. Weather permitting, the survey is expected to take place from middle- to late-July and to extend until approximately October 20, 1998.

Disturbance by seismic noise is the principal means of taking by this activity. Support vessels and aircraft will provide a secondary source of noise. The physical presence of vessels and aircraft could also lead to non-acoustic effects involving visual or other cues.

Seismic surveys are used to obtain data about formations several thousands of feet deep. The proposed seismic operation is an ocean bottom cable (OBC) survey. OBC surveys involve dropping cables from a ship to the ocean bottom, forming a patch consisting of four parallel cables 10 kilometers (km) (6.2 mi) long, separated 750 m (2,500 ft) from each other. Sensors (hydrophones and geophones) are attached to the cables. These hydrophones are used to detect seismic energy reflected back from underground rock strata. The original source of this energy is a submerged acoustic source, called a seismic airgun array, that releases compressed air into the water, creating an acoustical energy pulse that is directed downward toward the seabed. The source level planned for this project - a maximum of 249 dB re 1 μPa-m (27.2

bar-meters; zero to peak) or 255 dB re 1 µPa-m (53 bar-meters; peak-to-peak (p-p)) from a 1,500 in^3 array of airguns is in the lower to middle portion of the range of source levels commonly used for seismic operations with airgun arrays (Richardson *et al*., 1995). Normally, 36 seismic lines are run for each patch, covering an area 6.0 km by 17.5 km (3.7 mi by 10.87 mi), centered over the patch. The source lines for one patch will normally overlap with those for adjacent patches.

After sufficient data have been recorded to allow accurate mapping of the rock strata, the cable is lifted onto the deck of a cable-retrieval vessel, moved to a new location (ranging from several hundred to a few thousand feet away), and placed onto the seabed again. A detailed description of the work proposed for 1998 is contained in the application (Western Geophysical, 1998) and is available upon request (see **ADDRESSES**).

Comments and Responses

A notice of receipt of the application and proposed authorization was published on May 20, 1998 (63 FR 27709), and a 30-day public comment period was provided on the application and proposed authorization. During the comment period, comments regarding this application (and/or on a related application from BP Exploration (Alaska) (BPXA)), were received from the Marine Mammal Commission (MMC), the Alaska Eskimo Whaling Commission (AEWC), LGL Ltd. environmental research associates on behalf of the applicant, and Greenpeace Alaska (Greenpeace). Information on the activity and authorization request that are not subject to reviewer comments can be found in the proposed authorization notice and is not repeated here.

General Concerns

Comment 1: LGL Ltd provided information updating and correcting the **Federal Register** notice that (1) Western Geophysical's cables include both hydrophones and geophones, not just hydrophones, and (2) Western Geophysical's airguns discharge once every 16 to 24 seconds, not 1 second in duration every 5 to 12 seconds. These pulses are much less than 1 second in duration near the source, increasing to as much as 1 second in duration as received in the water at long horizontal distances.

Response: Thank you for providing this information.

Comment 2: On July 1, 1998, Western Geophysical submitted a letter to NMFS outlining modifications to its May 20, 1998, application. That letter noted that Western Geophysical's activity would be amended by the addition of shallow water cable equipment and the inclusion of a shallow water acoustic source. The shallow water equipment would be used in locations and times when the OBC system was not usable. The two sources would not be used simultaneously.

Response: NMFS has reviewed this letter and determined that, because the shallow water source is smaller (560 in^3) than either the 750 in^3 or the 1500 in^3 seismic array, and would not be used simultaneously with the larger sources, there will not be a cumulative effect. This modification is not considered significant. The IHA will ensure that the two sources are not used simultaneously and will require sound transmission measurements be made of both sources to ensure that the designated safety zones are conservative.

Marine Mammal Impact Concerns

Comment 3: Greenpeace contends that NMFS, Western Geophysical and, BPXA, the second applicant, rely on outdated, incomplete, and inaccurate information concerning the zone of influence for seismic operations on bowhead whales. Greenpeace believes that NMFS fails to respect or incorporate either the traditional knowledge (TK) of local whalers presented at various hearings or the results of the 1997 aerial surveys, both of which indicate a seismic zone of influence greater than the 7.5 km (4.5 mi) used by NMFS. The AEWC believes the data clearly shows that bowheads are displaced and deflected at least 20 km (12 miles) by the noise of the seismic vessel when operating.

Response: Western Geophysical's application and the notice of proposed authorization note that, in addition to the known responses out to a distance of several kilometers, less conspicuous and/or less frequent effects may extend to greater distances. Since the application was submitted, a draft final report describing BPXA's combined 1996 and 1997 monitoring results (Richardson [ed.], 1998) has been completed. That report shows that (1) BPXA's 1996 and 1997 seismic programs did not greatly influence the position of the overall migration corridor; (2) although the aerial surveys showed at least partial avoidance of the area within 20 km (12 mi) of seismic operations, the 20 km (12 mi) figure is a very imprecise estimate of potential avoidance radius; and (3) the pattern of bowhead call detection rates at various locations north and east of the 1996 area of seismic operations has suggested that migrating bowheads either called less often when near active seismic vessel, or tended to divert away from that area, or both. For additional information on the estimated zones that seismic airguns have on bowhead whales, please refer to the proposed authorization notice mentioned in this document.

It is recognized that it is difficult (for scientists at least) to determine the maximum distance at which reactions occur (Moore and Clark, 1992) that may have an adverse impact on subsistence needs. Inuit whalers, on the other hand, believe that whales exhibit avoidance reactions as far as 48 km (30 miles) away (MMS, 1997). As a result, Western Geophysical developed a Conflict and Avoidance Agreement (C&AA) with the whalers to reduce any potential interference with the hunt. That agreement was concluded by both parties on July 8, 1998.

Also, it is believed that the monitoring plan proposed by Western Geophysical (LGL Ltd. and Greeneridge, 1998b), revised on the basis of comments received during this public review period and at the Peer-Review Workshop, will provide information that will help resolve uncertainties about the effects of seismic exploration on the accessibility of bowheads to hunters.

Comment 4: Greenpeace notes that Western Geophysical fails to address the impact of an airgun on bowhead hearing at any number of distances within and beyond the zone of influence and fails to account for the impact from an airgun array operating 70 m (210 ft) from a bowhead. LGL Ltd. comments that the application notice states that temporary threshold shift (TTS) is a theoretical possibility for animals within a few hundred meters and that mitigation measures are designed to avoid exposing mammals to sound pulses that have any possibility of causing hearing damage. LGL Ltd notes that TTS is a natural protective mechanism built into the mammalian ear. Modest levels of TTS do not constitute hearing damage.

Response: The impact of airguns on bowhead hearing has been addressed in several documents, including Western Geophysical's application, the supporting EA, and in LGL and Greeneridge (1998). Without an ability to collect empirical information on physical impacts from airguns on large marine mammals, scientists must rely on either surrogate species and make conservative assumptions based upon findings for those species.

Comment 5: Greenpeace notes in its letter that marine mammals use sound to communicate and, it is clear, that many species are extremely sensitive to both sound and physical disturbance. Greenpeace also notes that industrial noise and other activities interfere with bowhead cow-calf bonding and cause displacement from feeding areas and migratory routes. The energetic costs of noise-related changes in behavior and distribution patterns are potentially significant and will inevitably constitute harassment and ''take.''

Response: Thank you for providing this comment. Because there are potential effects on bowhead whales by seismic activities, an IHA is warranted. Under the IHA, NMFS will require Western Geophysical to incorporate mitigation and monitoring measures to reduce potential impacts to the lowest level practicable.

Comment 6: Greenpeace states that the fall bowhead migration begins in August, and a significant proportion of the population may be in the vicinity of Western Geophysical's seismic operations during the latter half of August. Citing Moore and Clarke (1991), Greenpeace states that, during mid- to late-August, as many as 1,200–3,000 bowhead whales may be present in the Beaufort Sea region from the Canadian border to the offshore area demarcated by the western boundary of the Arctic National Wildlife Refuge.

Response: NMFS notes that the region cited by the commenters is east of the proposed seismic survey area for Western Geophysical and that bowhead whale numbers referenced by Greenpeace are overstated because they include bowheads located in the Canadian Beaufort Sea. Moore and Clark (1991) estimated that in 1982 through 1984, up to 500 (range 0–500) bowheads may be in the region annually between the Barter and Flaxman islands; however, no whales were sighted west of that region prior to September 1 during those years. This is verified by Ljungblad *et al.* (1987). Most sighted bowheads were still in Canadian waters.

NMFS notes that, in general, bowhead whales migrate westward through the Alaskan Beaufort Sea from late August to late October, but only a portion of the population has been estimated during this time period. Other bowheads are either undetectable to observers (*i.e.*, under the ice), migrate prior to surveys commencing, or do not migrate to the Canadian Beaufort Sea.

Comment 7: LGL Ltd. provided information that airgun sounds may be audible to beluga whales at long distances not only because of the high source levels, but also because some energy at frequencies of a few hundred hertz propagates horizontally from the seismic vessel. Beluga hearing is more sensitive to these frequencies than to the lower frequencies that dominate the seismic output (Richardson and Wursig, 1997; see also Goold, 1998).

Response: Thank you for providing this information.

Comment 8: LGL Ltd. provided information from a paper by Kastak and Schusterman (1998) updating information provided in Western Geophysical's application and in the notice of proposed authorization which indicates that, for one harbor seal tested, the hearing threshold was 102 dB re 1 uPa at 75 Hz, 96 dB at 100 Hz, and 84 dB at 200 and 400 Hz. These results are consistent with previously reported preliminary data at 100 Hz.

Response: Thank you for providing this information.

Comment 9: LGL Ltd. corrected a statement in the notice that ''no studies to date have focused on pinniped reaction to underwater noise from pulsed, seismic arrays,'' noting that while this was true up to early 1996, the monitoring results from the 1996 and 1997 BPXA program have provided considerable information about reactions of seals. These have been described in detail in the 90-day and final reports on the 1996 and 1997 BPXA monitoring programs, as described in Richardson [ed.] (1998).

Response: Thank you for the comment. NMFS notes, however, that, while opportunistic observations have been made of seismic noise impacts on pinnipeds over the last few years, NMFS is aware of only one researcher who has physiologically monitored individual animals reaction to seismic noise. Preliminary information provided by this individual earlier this year at the annual meeting of the Marine Mammal Society in Monaco supports the results reported here.

Subsistence Concerns

Comment 10: The AEWC objects to the issuance of IHA permits to BPXA and Western Geophysical because of their opposition to seismic activities which interfere with the availability of bowhead whales within their subsistence hunting area. Greenpeace believes that seismic activities will result in a significant and unmitigable impact to subsistence communities.

Response: As mentioned previously, BPXA withdrew its application for an incidental harassment authorization on July 6, 1998. As a result, only Western Geophysical will conduct open water seismic operations this summer in the U.S. Beaufort Sea. In part, section 101(a)(5) of the MMPA requires NMFS to ensure that any taking will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. Two elements must be present for NMFS to determine that there will not be an unmitigable adverse impact on subsistence uses: First, the impact resulting from the specified activity must be likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (1) causing the marine mammals to abandon or avoid hunting areas, (2) directly displacing subsistence users, or (3) placing physical barriers between the marine mammals and subsistence hunters. Second, it must be an impact that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met (50 CFR 216.103). This standard of determining impact does not require the elimination of adverse impacts, but it does require mitigation sufficient to meet subsistence requirements. However, the MMPA also requires that, where applicable, the measures will ensure the least practicable impact on the availability of marine mammals for taking for subsistence uses. In 1996 and 1997, these conditions were met through the C&AA (also known as a Plan of Cooperation) by requiring seismic operations to move west of Cross Island no later than September 1 or when whalers commenced the bowhead hunting season, whichever was earlier. A similar agreement for 1998 was concluded on July 8, 1998, between the AEWC/North Slope Borough (NSB) and Western Geophysical. As a result of this signed C&AA, NMFS concludes that there will not be an unmitigable adverse impact on the subsistence needs of the NSB whalers this year due to seismic activities.

Comment 11 : In order to mitigate impacts on the availability of bowhead whales for subsistence needs, the AEWC believes the IHAs, if issued to both BPXA and Western Geophysical, must require that (1) all seismic operations east of Cross Island cease on August 15 or when a bowhead whale is sighted at Kaktovik (whichever is earlier); (2) all seismic operations east of 150 degrees West cease on August 15 or when active whaling begins in Nuiqsut or Kaktovik (whichever is earlier); and (3) all seismic operations cease on September 1 until Kaktovik, Nuiqsut, and Barrow have completed their hunts.

Response: A signed C&AA requiring, among other things, for Western Geophysical to cease all seismic activities east of Cross Island after August 31 and to move to the westernmost portion of their seismic activity area if impacts to bowhead whales continue after moving west of

Cross Island is the result of negotiations between the AEWC and Western Geophysical. This signed C&AA supercedes the recommendations made on June 2, 1998, by the AEWC.

Mitigation Concerns

Comment 12: LGL Ltd. noted several errors in the shutdown distances for airgun restrictions as published in the notice of proposed authorization.

Response: For clarity, NMFS is republishing the shutdown distance criteria in this document (see Mitigation).

Comment 13: The AEWC recommends that, after August 15, the two seismic operations must be arranged so that (1) neither is directly offshore of the other, and (2) they are separated by at least a 25–mile east-west distance (so that the 12 miles (20 km) exclusion zone, seen in the 1997 monitoring, do not overlap.

Response: Since there are no longer two planned seismic operations to be conducted in the Beaufort Sea this summer, response to this comment is no longer applicable.

Monitoring Concerns

Comment 14: Greenpeace contends that the monitoring program proposed by Western Geophysical is not sufficiently rigorous nor independent to adequately provide reliable research to support findings about the impacts of seismic operations on marine mammals. Greenpeace recommends an additional 5 bottom-mounted acoustic recorders be installed in the offshore Beaufort Sea to detect marine mammal (principally bowhead whale) vocalizations. Greenpeace also recommends noise measurements be conducted at distances of 10 km (6 mi), 20 km (12 mi), 30 km (18 mi), 40 km (24 mi), and 50 km (30 mi).

Response: Thank you for your recommendations. Section 101(a)(5)(D)(ii)(II) of the MMPA requires authorizations issued under this section to prescribe, where applicable, requirements pertaining to the monitoring and reporting of such taking by harassment, including requirements for independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence purposes.

Western Geophysical's proposed monitoring plan for 1998 and the results from LGL Ltd.'s 1996 and 1997 Beaufort Sea research were the subject of a scientific peer-review workshop held in Seattle, WA, on May 17 through 19, 1998. As a result of that workshop and the comments submitted on their application, Western Geophysical amended its monitoring plan and submitted that plan to NMFS for approval. Modifications to the original plan include (1) reference to boat-based marine mammal observers onboard the second source vessel; (2) a 32–km westward extension of aerial surveys to address the question how far west of the seismic area do bowhead whales remain farther offshore than usual if bowheads are displaced offshore by seismic; (3) an additional autonomous seafloor acoustic recorder (ASAR) farther offshore from the area of seismic operations as well as the three previously proposed ones along the 25–m contour; and (4) an attempt to retrive the two ASARs left on the bottom of the Beaufort Sea last fall.

This amended plan is being independently peer-reviewed for NMFS. Greenpeace's monitoring recommendations will be provided to these reviewers for consideration. It should be noted that workshop participant's recommended that, in addition to the three bottom-mounted recorders planned for deployment by each seismic acitivity, an additional 2–3 bottom-mounted recorders be installed offshore of the area of seismic operations. However, the withdrawal of BPXA from an active seismic program in 1998, made unnecessary the use of a significant increase in the number of offshore recorders.

Comment 15: Greenpeace states that the monitoring program is inadequate because it fails to account for the cumulative impact of two open-water seismic programs operating concurrently. Greenpeace also states that the monitoring program fails to account for the additional impacts of ongoing, concurrent and future oil and gas activities. The monitoring program must be sufficiently rigorous in design and scope to determine this cumulative impact.

Response: Western Geophysical's and BPXA's proposed monitoring plans were the subject of a peer-review workshop held in Seattle, WA, between May 17 and 19, 1998. These monitoring plans were being amended based upon that workshop when BPXA withdrew from participating in seismic exploration during the 1998 open water season. Part of their monitoring programs would have addressed the effects of cumulative impact of their seismic programs on bowheads. As a result of BPXA's withdrawal, there will not be a cumulative impact from seismic activities this year (Western Geophysical's two seismic vessels will not operate at the same time). A copy of Western's final monitoring program is available upon request (see **ADDRESSES**).

NMFS is unaware of any oil and gas activities currently underway in the offshore Beaufort Sea that might result in impacts to marine mammals. Distant water and nearshore activities are presumed by NMFS to result in an increase in the ambient noise in the marine environment. Increasing ambient noise in this environment is of concern to NMFS. Ambient noise measurements have been made by LGL Ltd. in 1996 and 1997; opportunistic measurements will continue in 1998 during a one-week acoustical measurement program and by use of sonobuoys and bottom recorders.

Comment 16: The MMC recommends NMFS review the data to determine whether a single observer is able to locate and determine when any marine mammal is in, or is likely to enter, the designated safety zone around the towed array and, if not, require that additional observers be required.

Response: NMFS has reviewed the information provided in the 1996 and 1997 monitoring program report and determined that a single biological observer is unable to ensure that no marine mammals (e.g., seals) enter the designated safety zone and that a single observer cannot adequately view both the safety zone and that portion of the zone of influence visible from the ship's bridge. However, because bowheads appear to avoid the area visible to the observer and because seals appear at times to be attracted to seismic vessels, NMFS has determined that two observers on watch at all times is unncessary except whenever the seismic source is powered (ramped) up. In addition, observers will be required to ensure that no marine mammals enter the bow aspect of the safety zone; a lesser effort should be spent on seals entering from the sides or rear portions of the safety zone. This year's reporting requirement will include a requirement for a comprehensive assessment on the effectiveness of single observer coverage. NMFS will review the data obtained during 1998 season to determine whether future authorizations will need additional observers during all daytime seismic operations.

Comment 17: Greenpeace believes that the monitoring program is inadequate because observers will be unable to visually identify whales or seals at night or at other times of poor visibility. Where the impacts will occur after mid-July, because of the increasing hours of darkness, the probability of impacts at night and the inadequacies of the monitoring program to detect them are a virtual certainty. Similar impairment can be expected in times of fog and in other periods of poor visibility.

Response: Observers monitor the safety zones and zones of potential harassment around the seismic source whenever visibility permits, and the source is either on or within 30 minutes of powering up. Observers are aided by night-vision equipment for monitoring the safety zone. Assessments of takes by harassment will be made based upon the percentage of time spent observing in relation to the total time for seismic operations. Because: (1) relatively few marine mammals are expected in the area during the time of the survey, (2) the vessels are underway at low speeds while laying or pulling OBC cable or conducting seismic surveys, theoretically allowing animals sufficient time to move away from any annoyances, and (3) documented observations indicate that bowhead whales avoid active seismic survey areas few, if any, bowheads are expected to approach the vessel and therefore, terminating surveys at night and during inclement weather is not warranted.

Comment 18: The AEWC has recommended that a monitoring program be in place for each seismic operation and, after September 1, must be at least as detailed as that used during monitoring the 1997 seismic operation. In addition, the IHA should require the (aerial survey) monitoring to be expanded to the west to the extent needed to determine when whales, displaced by seismic noise, return to their normal migration route.

Response: Thank you for the comment. This monitoring recommendation was also provided by the AEWC at the 1998 Seattle workshop. As a result, the monitoring plan has been revised to follow this recommendation.

Comment 19: The MMC recommends NMFS (1) take such steps as necessary to verify that the operation of, and the sounds produced by, the cable, seismic source, and related support vessels are unlikely to have any effect on marine mammals in or near the proposed survey area; and (2) require the Monitoring Plan be augmented to measure the levels and characteristics of sounds produced by the various vessels and confirm those sounds have no effect on marine mammals.

Response: While NMFS does not believe that noise from vessels will have no impact on marine mammals, it is recognized as being a secondary source for potential harassment of marine mammals. These sources are authorized under the IHA, should an incidental harassment occur. The 1998 monitoring program will continue the program of previous years to measure vessel sounds, with an emphasis on vessels not recorded in 1996 or 1997. The results of these measurements are reported annually.

National Environmental Policy Act (NEPA) Concerns

Comment 20: Greenpeace believes that, for several reasons, NMFS has failed to meet NEPA standards. First, the 1996 EA was written by BPXA, not by NMFS, and is deficient. Second, the 1998 activity is for a broader area and timeframe than described in the 1996 EA. Third, the 1996 EA fails to take account of the cumulative impact of two activities (BPXA and Western Geophysical applications). Finally, significant new information has become available since the 1996 EA was issued.

Response: In conjunction with the 1996 notice of proposed authorization for BPXA's application (61 FR 26501, May 28, 1996), NMFS released an EA that addressed the impacts on the human environment from the proposed issuance of an IHA to BPXA to conduct a 3–D seismic survey in the Western Beaufort Sea and the alternatives to that proposed action. That document was written for NMFS by LGL Ltd under funding provided by BPXA. This procedure is considered proper for building a Record of Decision. No comments were received on the EA, and, on July 18, 1996, NMFS adopted the contractor-drafted EA and concluded that neither implementation of the proposed authorization to BPXA for the harassment of small numbers of several species of marine mammals incidental to conducting an ocean-bottom cable seismic survey during the open water season (July through October) in the Northstar Unit and nearby waters in the U.S. Beaufort Sea nor the alternatives to that action would significantly affect the quality of the human environment. That determination was based on an evaluation of a single airgun array with 8–12 guns totaling 1,200–1,500 in^3, (2,000 psi, 250 dB re 1 μPa-m, p-p), a possible second array (see page 64 of the EA), and the use of a second single airgun source (40 in^3; 232 db re p-p) for calibration, for up to 100 days of operations. It should be noted that, although the planned focus of efforts for the 1996 seismic survey was the Northstar Island area, figure 1 of the EA indicates the area of possible seismic activity extended from Spy Island in the west to Flaxman Island in the east. In addition, the EA notes that BPXA may relocate to another site and continue the survey until freeze-up (approximately October 20th).

Western Geophysical's planned seismic area for 1998 is roughly between Harrison Bay in the west to Camden Bay/Flaxman Island in the east; negligibly different from that described in the EA. In addition, both the 1996 application (and EA) and the 1998 applications indicate that surveys would be conducted between July and October.

In 1998, weather permitting, activity in the U.S. Beaufort Sea was proposed to increase, with primary airgun arrays being used by Western Geophysical (up to 16 guns in an array totaling to 1,500 in^3 @ 2,000 psi). Western Geophysical plans to utilize a third source of 560 in^3 (which it does not plan to use at the same time as the primary source).

While neither applicant's activity alone exceeds the activity description found in the 1996 EA, both applicants' activities together had the potential to result in cumulative impacts not addressed in the 1996 EA, and a new analysis was warranted. However, BPXA's withdrawal from open-water seismic activities on the North Slope in 1998 made the preparation of a new environmental analysis unnecessary. Should more than one seismic survey take place on the North Slope in 1999, NMFS will release a revised EA that addresses the impacts from more than one survey being conducted concurrently.

Comment 21: Greenpeace believes that the described action fits the standard neither for a FONSI nor for a ''Categorical Exclusion.'' Greenpeace believes that because of impacts on native subsistence as well as on the Arctic marine ecosystem, particularly the bowhead whale and other marine species, NMFS must prepare a full, comprehensive EIS.

Response: NMFS disagrees. As discussed in this document, neither commenters, recent monitoring and research, nor TK have provided information that the impact (with mitigation and C&AA in place) would be more than negligible (i.e., significant; see the definition in 40 CFR 1508.24) on the bowhead or beluga whales or on several species of seals and would not have an unmitigable adverse impact on the availability of these marine mammal species for subsistence uses. Since NMFS must analyze a request for IHAs to determine whether the proposed activity has no more than a negligible impact on a species or stock of marine mammals and does not have an unmitigable adverse impact on subsistence users, it believes that the issuance of a small take authorization requires only the preparation of an EA and not of an EIS. In this case, the agency found through preparing an EA in 1996, that the proposed action(s) will not significantly affect the quality of the human environment, thus making a finding of no significant impact. If the EA results in this finding, no additional documents are required by NEPA (NOAA Directives Manual 02–10).

Information on the impacts on the marine environment from Beaufort Sea oil and gas leasing activities, including seismic, in the area under discussion has been addressed in several EISs prepared by Minerals Management Service (MMS). Final EISs for Lease Sale 124 and 144 were completed in 1990 and 1996.

Cumulative Impact Concerns

Comment 22: Greenpeace believes NMFS is ignoring cumulative impacts from oil exploration and development on subsistence communities, bowhead whales, and other marine mammals in the Arctic environment. Greenpeace believes that impacts from seismic operations cannot be assessed separately from offshore exploratory drilling, development, and transportation activities that may follow or are already occurring.

Response: The commenter is correct, however, NMFS would like to clarify that NMFS' responsibility in this action is limited to the issuance or denial of an authorization for the short-term, incidental harassment of a small number of marine mammals by Western while conducting a seismic survey within an authorized lease sale area. NMFS does not authorize the exploration and development of oil and gas itself (e.g., conducting seismic surveys) as such authorization is provided by the MMS of the U.S. Department of the Interior and is not within the jurisdiction of the Secretary of Commerce.

NMFS also notes that the responsibility for reviewing an activity's cumulative impact belongs primarily to the responsible permitting agency, and, if that activity is Federal, federally funded or federally permitted cumulative impacts are usually reviewed under NEPA. MMS has responsibility for leasing and subsequent exploration and development activities under the Outer Continental Shelf Lands Act. As a result, MMS published draft and final EISs under NEPA regarding leasing of offshore oil and gas exploration for Lease Sale Area 144. Cumulative impacts from oil and gas exploration operations are described in those NEPA documents.

In addition, a multi-agency NEPA document is currently under public review and comment. This document will analyze the proposal for oil and gas development at Northstar and the alternatives to that proposal. A notice of NEPA scoping was published for public comment in November 1995; a draft EIS was released by the Corps of Engineers on June 1, 1998. An analysis of concerns regarding potential future oil and gas industry and other environmental issues will be found in this document.

Comment 23: The MMC recommended NMFS consult with appropriate agencies and organizations to determine the long-term monitoring that would be required to confirm that the proposed seismic surveys and possible future exploration and development activities do not cause changes in the seasonal distribution patterns, abundance, or productivity of marine mammal populations in the area.

Response: NMFS agrees but notes that this recommendation extends beyond the requirements of the 1998 monitoring program for Western Geophysical's seismic survey. However, to the extent practicable, NMFS intends to use the peer-review process required by the MMPA for small take authorizations in Arctic waters to address these cumulative impact monitoring concerns in the future.

ESA

Comment 24: Greenpeace states that the issuance of an IHA to Western Geophysical (or BPXA) would violate the ESA as it is inconsistent with the requirements and underlying purposes of the ESA and with the requirements that each agency use the best scientific and commercial data available.

Response: NMFS disagrees, noting that the issuance of an IHA to Western Geophysical triggers section 7 of the ESA, as the issuance of the IHA is a Federal action. However, the major federal agency for offshore oil and gas lease activities is the Minerals Management Service (MMS). Consultation under section 7 for lease sale 144 was concluded on November 16, 1995, with a finding that the action was not likely to jeopardize the continued existence of listed species.

Reinitiation of formal consultation under section 7 is warranted only when there is new scientific information that has the potential to call into question the scientific and commercial data used in the previous biological opinion. At this time, NMFS does not consider the recent findings on impacts to listed marine species from the disturbance from seismic surveys sufficient to reinitiate consultation.

Mitigation

Western Geophysical will use biological observers to monitor marine mammal presence in the vicinity of the seismic array. To avoid serious injury to marine mammals, Western Geophysical will power down the seismic source if pinnipeds are sighted within the area delineated by the 190 dB isopleth or:

(1) Within 170 m (558 ft) of an array <750 in^3 operating at <2.5 m (8.3 ft) depth;

(2) Within 280 m (919 ft) of an array <750 in^3 operating at >2.5 m (8.3 ft) depth;

(3) Within 200 m (656 ft) of an array 1500 in^3 operating at <2.5 m (8.3 ft) depth;

(4) Within 350 m (1,148 ft) of an array 1500 in^3 operating at >2.5 m (8.3 ft) depth.

Western Geophysical will power down the seismic source if bowhead, gray, or belukha whales are sighted within the area delineated by the 180 dB isopleth or:

(1) Within 660 m (2,165 ft) of an array <750 in^3 operating at <2.5 m (8.3 ft) depth;

(2) Within 900 m (2,953 ft) of an array <750 in^3 operating at >2.5 m (8.3 ft) depth;

(3) Within 750 m (2,461 ft) of an array 1500 in^3 operating at <2.5 m (8.3 ft) depth;

(4) Within 1,000 m (3,281 ft) of an array 1500 in^3 operating at >2.5 m (8.3 ft) depth.

In addition, Western Geophysical proposes to ramp-up the seismic source to operating levels at a rate no greater than 6 dB/min, commencing with an 80 in^3 airgun. Additional guns will be added at intervals appropriate to limit the rate of increase in source level to a maximum of 6 dB/min.

Monitoring and Reporting Monitoring

As part of its application, Western Geophysical provided a monitoring plan for assessing impacts to marine mammals from seismic surveys in the Beaufort Sea. This monitoring plan is described in Western Geophysical (1998) and in LGL Ltd. and Greeneridge Sciences Inc. (1998). As mentioned previously, this monitoring plan was amended based on review and comment and was submitted to NMFS on July 15, 1998. As required by the MMPA, this monitoring plan will be subject to a peer-review panel of technical experts prior to formal acceptance by NMFS.

Preliminarily, Western Geophysical plans to conduct the following:

Vessel-Based Visual Monitoring

A minimum of two biologist-observers aboard the seismic vessel will search for and observe marine mammals whenever seismic operations are in progress and for at least 30 minutes prior to planned start of shooting. These observers will scan the area immediately around the vessels with reticulated binoculars during the daytime and with night-vision equipment during the night (prior to mid-August, there are no hours of darkness). Individual watches will normally be limited to no more than four consecutive hours during daylight hours.

When mammals are detected within a safety zone designated to prevent injury to the animals (see Mitigation), the geophysical crew leader will be notified so that shutdown procedures can be implemented immediately.

Aerial Surveys

From September 1, 1998, until 3 days after the seismic program ends, aerial surveys will be conducted daily, weather permitting. The primary objective will be to document the occurrence, distribution, and movements of bowhead and belukha whales in and near the area where they might be affected by the seismic pulses. These observations will be used to estimate the level of harassment takes and to assess the possibility that seismic operations affect the accessibility of bowhead whales for subsistence hunting. Pinnipeds will be recorded when seen. Aerial surveys will be at an altitude of 300 m (1,000 ft) above sea level. Western Geophysical proposes to avoid overflights of the Cross Island area where whalers from Nuiqsut are based during their fall whale hunt.

Consistent with 1996 and 1997 aerial surveys in the U.S. Beaufort Sea, the daily aerial surveys are proposed to cover two grids: (1) A grid of 16 north-south lines spaced 8 km (5 mi) apart and extending from about 50 km (30 mi) west of the western side of the then-current seismic exploration area to 50 km (30 mi) east of its eastern edge, and from the barrier islands north to approximately the 100 m (328 ft) depth contour; and (2) a grid of 4 survey lines within the above region, also spaced 8 km (5 mi) apart and mid-way between the longer lines, to provide more intensive coverage of the area of the seismic operations and immediate surrounding waters.

When the seismic program is relocated east or west along the coast during the 1998 season, both survey grids will be relocated a corresponding distance along the coast. Information on the survey program can be found in Western Geophysical (1998) and in LGL Ltd. and Greeneridge Sciences Inc. (1998).

Acoustical Measurements

The acoustic measurement program proposed for 1998 is designed to continue the research conducted in 1996 and 1997 (see BPXA, 1996a, 1997, and 1998; LGL Ltd. and Greeneridge Sciences Inc., 1996, 1997, and 1998). The acoustic measurement program is planned to include (1) boat-based acoustic measurements, (2) OBC-based acoustic measurements, (3) use of air-dropped sonobuoys, and (4) bottom-mounted acoustical recorders.

The boat-based acoustical measurement program is proposed for a 7-day period in August 1998. The objectives of this survey will be as follows: (1) To measure the levels and other characteristics of the horizontally propagating seismic survey sounds from the type(s) of airgun array(s) to be used in 1998 as a function of distance and aspect relative to the seismic source vessel(s) and to water depth.

(2) To measure the levels and frequency composition of the vessel sounds emitted by vessels used regularly during the 1998 program.

(3) To obtain additional site-specific ambient noise data, which determine signal-to-noise ratios for seismic and other acoustic signals at various ranges from their sources.

Western Geophysical and its proposed consultant (Greeneridge Sciences) are investigating the use of the OBC-system to help document horizontal propagation of the seismic surveys. In addition, during late August and September, four autonomous seafloor acoustic recorders will be placed on the sea bottom to record low-frequency sounds nearly continuously for up to 3 weeks at a time. Information includes characteristics of the seismic pulses, ambient noise, and bowhead calls. Additional data on these noise sources will be obtained from sonobuoys dropped from aircraft after September 1.

For a more detailed description of planned monitoring activities, please refer to the application and supporting document (Western Geophysical, 1998; LGL Ltd. and Greeneridge Sciences Inc., 1998b).

Estimates of Marine Mammal Take

Estimates of takes by harassment will be made through vessel and aerial surveys. Preliminarily, Western Geophysical will estimate the number of (a) marine mammals observed within the area ensonified strongly by the seismic vessel; (b) marine mammals observed showing apparent reactions to seismic pulses (e.g., heading away from the seismic vessel in an atypical direction); (c) marine mammals subject to take by type (a) or (b) above when no monitoring observations were possible; and (d) bowheads displaced seaward from the main migration corridor.

Reporting

Western Geophysical will provide an initial report on 1998 activities to NMFS within 90 days of the completion of the seismic program. This report will provide dates and locations of seismic operations, details of marine mammal sightings, estimates of the amount and nature of all takes by harassment, and any apparent effects on accessibility of marine mammals to subsistence users.

A final technical report will be provided by Western Geophysical within 20 working days of receipt of the document from the contractor, but no later than April 30, 1999. The final technical report will contain a description of the methods, results, and interpretation of all monitoring tasks.

Consultation

Under section 7 of the ESA, NMFS has completed consultations on the issuance of this authorization.

Conclusions

NMFS has determined that the short-term impact of conducting seismic surveys in the Western Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of cetaceans. While behavioral modifications may be made by these species of cetaceans and seals to avoid the resultant noise, this behavioral change is expected to have a negligible impact on the animals.

The number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of seismic operations. Due to the distribution and abundance of marine mammals during the projected period of activity and to the location of the proposed seismic activity in waters generally too shallow and distant from the edge of the pack ice for most marine mammals of concern, the number of potential harassment takings is estimated to be small (see 63 FR 27709, May 20, 1998, for potential levels of take). In addition, no take by injury and/or by death is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through incorporation of the mitigation measures described in the authorization.

Because bowhead whales are east of the seismic area in the Canadian Beaufort Sea until late August/early September, seismic activities are not expected to impact subsistence hunting of bowhead whales prior to that date. After August 31, 1998, Western Geophysical will initiate aerial survey flights for bowhead whale assessments, and take other actions to avoid having an unmitigable adverse impact on subsistence uses. Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs is the subject of consultation between Western Geophysical and subsistence users. As a result of discussions between the two parties, a C&AA has been completed. This Agreement consists of three main components: (1) Communications, (2) conflict avoidance, and (3) dispute resolution.

Summer seismic exploration in the U.S. Beaufort Sea has a small potential to influence seal hunting activities by residents of Nuiqsut. However, NMFS believes that, because (1) the peak sealing season is during the winter months, (2) the main summer sealing is off the Colville delta, and (3) the zone of influence by seismic sources on beluga and seals is fairly small, the 1998 Western Geophysical seismic survey will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

Since NMFS is assured that the taking would not result in more than the incidental harassment (as defined by the MMPA Amendments of 1994) of small numbers of certain species of marine mammals, would have only a negligible impact on these stocks, would not have an unmitigable adverse impact on the availability of these stocks for subsistence uses, and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Authorization

Accordingly, NMFS has issued an IHA to Western Geophysical for the above described seismic survey during the 1998 open water season provided the mitigation, monitoring, and reporting requirements described in the authorization are undertaken.

Dated: July 23, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–20280 Filed 7-28-98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072298B]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Bluefish Advisory Panel, together with the Atlantic States Marine Fisheries Commission's Bluefish Advisory Panel, will hold a public meeting.

DATES: The meeting will be held on Tuesday, August 11, 1998, from 10:00 a.m. until 5:00 p.m.

ADDRESSES: This meeting will be held at the Four Points Hotel, 4101 Island Avenue, Philadelphia, PA, telephone: 215–492–0400.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Acting Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 16.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss the public hearing document for Amendment 1 to the Bluefish Fishery Management Plan and possible bluefish management measures for 1999.

Although other issues not contained in this agenda may come before the Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 23, 1998.

Richard W. Surdi,

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

[FR Doc. 98–20278 Filed 7–28–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071098H]

New England Fishery Management Council; Public Meetings; Correction

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

ACTION: Correction to a public meeting notice.

SUMMARY: The agenda for the meetings of the oversight committees and advisory panels of the New England Fishery Management Council (Council) was published on July 16, 1998. The document contained an incorect date.

DATES: The meetings will be held on August 3 and August 7, 1998.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director;(781) 231–0422.

Correction

In the **Federal Register** issue of July 16, 1998, in FR Doc. 98–19010, on page 38390, in the third column, under **SUPPLEMENTARY INFORMATION**, in the 1st and the 14th lines, ''July 3, 1998'' is corrected to read ''August 3, 1998.''

Dated: July 22, 1998.

Bruce Morehead,

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

[FR Doc. 98–20165 Filed 7-28-98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071598D]

Permits; Foreign Fishing

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

ACTION: Notice of receipt of foreign fishing application.

SUMMARY: NMFS publishes for public review and comment a summary of a foreign fishing application submitted under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by August 12, 1998.

ADDRESSES: Send comments (or requests for a copy of the application) to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2276.

SUPPLEMENTARY INFORMATION: Section 204(d) of the Magnuson-Stevens Act (16 U.S.C. 1824(d)) provides, among other things, that the Secretary of Commerce (Secretary) may issue a transshipment permit which authorizes a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the U.S. Exclusive Economic Zone (EEZ) or, with the concurrence of a State, within the boundaries of that State to a point outside the United States. NMFS has received an application requesting authorization for three Mexican vessels to receive within the area of the U.S. EEZ south of 34° N. lat., and east of 121° W. long., transfers of live tuna from a U.S. purse seiner for the purpose of transporting the tuna alive to the Mexican EEZ.

Section 204(d)(3) of the Magnuson-Stevens Act provides, among other things, that an appliaction may not be approved until the Secretary determines that ''no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated...an interest in performing the transportation at fair and reasonable rates.'' NMFS is publishing this notice as part of its effort to make this determination.

Interested U.S. vessel owners and operators may obtain a copy of the complete application, including vessel modifications necessary to accommodate the pens into which the live tuna will be placed, from NMFS (See **ADDRESSES**).

Dated: July 23, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–20212 Filed 7-28-98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071698C]

Marine Mammals; File No. P66j

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Mr. Wayne C. Regelin, Director, Division of Wildlife Conservation, Alaska Department of Fish and Game, P.O. Box 25526, Juneau, AK 99802–5526, has been issued an amendment to scientific research Permit No. 965 (P66j).

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK, 99802–1668 (907/586–7221).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro, 301/713–2289.

SUPPLEMENTARY INFORMATION: On June 3, 1998, notice was published in the **Federal Register** (63 FR 30201) that an amendment of Permit No. 965, issued June 19, 1995 (60 FR 34233), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq*.), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq*.), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

Permit No. 965 (P66j) authorizes the Alaska Department of Fish and Game (ADF&G) to: take a maximum of 125 Steller sea lions (*Eumetopias jubatus*) by trapping (including leash capture), darting, sampling, and anesthesia (including a maximum of 20 by recapture for follow-up blood sampling and removal of instruments); a maximum of 400 Steller pups over 6 months old by hand capture, gas anesthesia, and marking; a maximum of 10,000 Stellers by harassment during the course of capturing suitable animals; a maximum of 15 Stellers by unintentional mortality during the course of capture and chemical immobilization; and salvage specimens of stranded animals, premature pups, and mortalities associated with this and other research activities. The Holder is also authorized to take up to 30 rehabilitated California sea lions (*Zalophus californianus*) by injection with experimental immobilization drugs and a maximum of 3 for unintentional mortality. All takes will be over a 5-year period.

The amendment authorizes the Holder to take 25 additional (50 total) juvenile Steller sea lions (*Eumetopias jubatus*) annually using the underwater leash capture method to adequately describe the basic life history and ecology of this age class.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 23, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–20167 Filed 7-28-98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072298A]

Marine Mammals; File No. 715–1457

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. A.W. Trites, Research Director, North Pacific Universities Marine Mammal Research Consortium, 6248 Biological Sciences Road, Hut B3, Room 18, University of British Columbia, Vancouver, B.C. Canada, V6T 1Z4, has applied in due form for a permit to take Steller sea lions (*Eumetopias jubatus*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before August 28, 1998.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, National Marine Fisheries

Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

Dr. Trites is requesting authorization to: apply a dive behavior/stomach temperature sensor recorder to determine Steller sea lion foraging biology and energetics; gather data on the development of independent foraging of pups and juveniles; determine seasonal changes in diet and distribution; and collect data on life history parameters and indices of nutritional status.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 23, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–20213 Filed 7–28–98; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, § 10(a), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting on August 12, 1998 in the first floor hearing room (Room 1000) of the Commission's Washington, DC headquarters, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. The meeting will begin at 1:00 p.m. and last until 5:00 p.m. The agenda will consist of the following:

Agenda

1. Welcoming Remarks
2. Status Report on the Agricultural Trade Option Pilot Program and Discussion by Committee Members
3. Overview and Discussion of Proposed Rules Increasing Speculative Position Limits for Certain Agricultural Commodities and Amending CFTC Guideline 1, Contract Market Designation Requirements
4. The Future of Futures—a Discussion of Current Developments, Including Electronic and Off-Exchange Trading
5. Overview of the Upcoming CFTC Reauthorization
6. Other Business.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner David D. Spears, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Agricultural Advisory Committee, c/o Commissioner David D. Spears, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Commissioner Spears in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on July 23, 1998.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–20249 Filed 7–28–98; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Timeline for Applications for Assistance Under Americorps*State and National, Learn and Serve America, and National Senior Service Corps

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service announces its timeline for applications for assistance under AmeriCorps*State and National, Learn and Serve America, and National Senior Service Corps.

FOR FURTHER INFORMATION CONTACT: Nancy Talbot, (202) 606–5000, ext. 470. T.D.D. (202) 565–2799. For individuals with disabilities, information will be made available in alternative formats upon request.

SUPPLEMENTARY INFORMATION: Pursuant to the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 *et. seq.*), the Corporation for National and Community Service announces the following timeline for applications for assistance under AmeriCorps*State and National, Learn and Serve America, and National Senior Service Corps:

AmeriCorps*State
- Competitive Programs—January 26, 1999
- Formula Programs—April 20, 1999
- State Commission Administrative Funds—October 29, 1998

AmeriCorps*National—January 26, 1999

AmeriCorps*Tribes and Territories—April 20, 1999

AmeriCorps Education Awards Program—January 26 & April 20, 1999

Learn and Serve America
- School- and Community-based—March 16, 1999
- Higher Education—March 16, 1999

National Senior Service Corps (if applicable)—May, 1999 (specific date to be announced at a later time)

This timeline is for new applications, not renewal or continuing applications, and is contingent upon the availability of appropriations.

Dated: July 22, 1998.

Kenneth L. Klothen,

General Counsel, Corporation for National and Community Service.

[FR Doc. 98–20257 Filed 7–28–98; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement (EIS) for Projects and Activities Associated With Programs at White Sands Missile Range (WSMR), New Mexico

AGENCY: Department of the Army, DoD; White Sands Missile Range.

COOPERATING AGENCIES: U.S. Air Force; Ballistic Missile Defense Organization; Defense Special Weapons Agency; National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability.

SUMMARY: This notice of availability is for the White Sands Missile Range Final Environmental Impact Statement (EIS). The EIS addresses the potential impacts of several categories of test projects at WSMR. The testing categories include: missile testing (i.e., Multiple Launch Rocket System, Special Launch Vehicle, and Standard Missile), high altitude testing (i.e., High Altitude Balloon Experiment and Research Rockets), environmental testing (Large Blasts, Temperature Testing), and high energy testing (Lasers, Radio Detecting and Ranging (RADAR)).

In the past, WSMR incorporated the National Environmental Policy Act (NEPA) requirements into project planning on a case-by-case basis. To better evaluate the cumulative effects of unrelated actions being planned at the same time, the EIS incorporates all known and future programs. The analysis addresses potential impacts and cumulative effects. Mitigation of these effects is incorporated into the proposed action.

DATES: The public review period for this FEIS will end 30 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Anyone wishing to receive a copy of the EIS may send a postcard with their name and address to Commander, WSMR, ATTN: STEWS–NRES–C (Robert J. Andreoli), White Sands Missile Range, NM 88002–5048.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Andreoli at (505) 678–7926.

SUPPLEMENTARY INFORMATION: The EIS's proposed action and alternatives are described below:

Proposed Action

The proposed action of this EIS is the long-term operation of WSMR with the proposed adoption of specific mitigation measures for the continuation of existing programs and the future testing of scientific, military, and commercial systems. This proposed action includes two major components. The first component is the continuation of current project activities and existing operations and services including routine maintenance; modernization or removal of outdated facilities; and improvements in infrastructure, utilities, and services as necessary. The second component consists of changes in the number of projects and programs planned for the next 10-year period, with resulting changes in site usage and services. The proposed action includes adoption of mitigation measures to reduce the effect of WSMR activities on the environment.

Other Alternatives Considered

The no action alternative is the other primary alternative considered. This alternative represents the status quo. Under this alternative, WSMR would remain a viable national range which supports missile development and test programs for the Army, Navy, Air Force, NASA, and other government and private organizations. Chapter 1 of the WSMR Environmental Assessment (1985) describes the current activities at WSMR. The no action alternative is the continuation of existing missions and operations at approximately their current scope and rates, but without the adoption of specific mitigation measures.

The alternative of closing WSMR is considered to be out of the scope of this analysis. There are no Congressional or U.S. Army indications that this option is contemplated. A special NEPA process to address the shutdown and conversion of military bases has been established for such analyses.

The other preliminary alternative identified for consideration in the Notice of Intent (NOI), but not further analyzed in the EIS, focused on testing of future systems and expansion of the mission into nuclear effects testing and launches into WSMR from off the range. Ongoing simulated nuclear effects testing is included in current operations and is analyzed accordingly in the EIS. (This research is more accurately referred to as nuclear effects simulation. It does not involve the testing of actual nuclear weapons.) A parallel NEPA process has been implemented with respect to current off-range launches into WSMR and is briefly discussed in Section 1.5.

Dated: July 23, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 98–20210 Filed 7–28–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare a Draft Environmental Impact Statement (EIS) for Activities Associated With Future Programs at the U.S. Army Dugway Proving Ground, Utah

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: In accordance with Pub. L. 91–190, the National Environmental Policy Act of 1969, an EIS is being prepared to evaluate environmental implications of proposed operations, and development potential of Dugway Proving Ground (DPG) in terms of environmental carrying capacity. The proposed action includes diversifying DPG operations, the expansion of chemical and biological defensive testing, increased DoD training activities, and implementation of the installation real property master plan. Issues to be considered include new activities projected for the installation, modernization or removal of outdated facilities, and improvements to infrastructure, utilities and service necessary to accommodate new missions and changes in existing test, evaluation, and training missions. Three alternatives are being considered: (1) Increased training intensity without expansion of defensive chemical and biological testing; (2) expanded action (increased training, and diversified and increased testing); and (3) no-action which is the continuation of current operations and management intensity. Cessation of current mission activity is not a decision under consideration. Mitigation measures to minimize adverse environmental impacts may be developed for each alternative.

Scoping: The first step will be to determine the appropriate scope of issues, activities and alternatives to be addressed. Comments received as a result of this notice will be used to assist the Army in identifying potential impacts to the quality of the human environment. Individuals or organizations may participate in the scoping process by written comment or by attending scoping meetings. The Army will conduct scoping meetings in Salt Lake City and Tooele, Utah, prior to preparing the EIS (exact, date, time and location to be determined and will be advertised in the local news media at least 15 days prior to the scoping meeting).

DATES: The public scoping period will continue until October 15, 1998. Written public comments and suggestions can be submitted on or before September 28, 1998 to the address shown below. To ensure consideration in preparation of the draft EIS, written comments and suggestion should be postmarked by October 15th. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Commander, U.S. Army Dugway Proving Ground, ATTN: STEDPPA (Site-Wide EIS), Dugway, Utah 84022–5000.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E, Klauser, (435) 831–3739.

SUPPLEMENTARY INFORMATION: Among the anticipated areas to be evaluated are public health and safety, noise, shock and vibration, water quality, air quality, biological resources including threatened and endangered species, social and economic effects, and historical and archaeological resources.

Dated: July 23, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 98–20211 Filed 7–28–98; 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 Acting 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 August 28, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 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 Acting 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: July 23, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the General Counsel

Type of Review: Revision.

Title: General Education Provisions Act (GEPA) Section 427 Guidance for All Grant Applications.

Frequency: Once only per application for new awards.

Affected Public: Businesses or other for-profits; Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 5,125.

Burden Hours: 7,688.

Abstract: In compliance with Section 427 of the General Education Provisions Act, as amended by Pub. L. 103–382, all applicants for grant awards made by the Department of Education are required to describe in their applications the steps they propose to take to ensure equitable access to, and equitable participation in, the proposed grant activities conducted with federal funds. The Department has developed a single document that provides common guidance for all competitive and formula grant applicants on how they can meet this requirement. The language in this common guidance document is nearly identical to language that the Department has previously used in separate guidance documents applicable to discretionary grant applicants and to States that have previously applied for formula grants on the basis of consolidated plans available under Title XIV of the Elementary and Secondary Education Act.

Office for Civil Rights

Type of Review: Reinstatement.

Title: Fall 1998 Elementary and Secondary School Civil Rights Compliance Report.

Frequency: Biennially.

Affected Public: State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60,950.

Burden Hours: 293,419.

Abstract: The Elementary and Secondary School Civil Rights Compliance Report is the vehicle for the Office for Civil Rights (OCR), U.S. Department of Education, to acquire source material in the form of data and information regarding the civil rights compliance issues in the nation's public elementary and secondary schools. Information from the Elementary and Secondary School Civil Rights Compliance Report is used by OCR field offices when they consider public school districts for compliance reviews, and as source material when civil rights compliance investigations are conducted.

[FR Doc. 98–20169 Filed 7–28–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. SA98–86–000, SA98–87–000, SA98–88–000, SA98–89–000, SA98–90–000, SA98–91–000 (Not Consolidated)]

Beren Corporation; Notice of Petitions for Dispute Resolution and Adjustment

July 23, 1998.

Take notice that on June 30, 1998, Beren Corporation (Beren) filed the above-referenced petitions, pursuant to section 502(c) of the Natural Gas Policy Act of 1978. Beren's petitions, for various reasons, reject (in whole or in part) the Kansas ad valorem tax refund claims made by the pipelines listed below.

Pipeline	Docket No.
ANR Pipeline Company	SA98–86–000
Williams Gas Pipelines Central, Inc.	SA98–87–000
Colorado Interstate Gas Company.	SA98–88–000
K N Interstate Gas Transmission Company.	SA98–89–000
Panhandle Eastern Pipe Line Company.	SA98–90–000
Northern Natural Gas Company.	SA98–91–000

If adjustment relief becomes necessary (i.e., if the Commission determines that Beren owes Kansas ad valorem tax refunds to one or more of the subject pipelines), Beren requests to be relieved from making the refunds attributable to royalties, on the ground that such refunds are now uncollectible. Beren asserts uncollectability based on various factors, including the death of certain royalty interest owners and the enactment of section 7 of House Bill No. 2419, by the State of Kansas. Beren's petitions are on file with the Commission and they are open to public inspection.

The Commission, by order issued September 10, 1997, in Docket No. RP97–369–000 *et al.*,[1] on remand from the D.C. Circuit Court of Appeals,[2] directed First Sellers to make Kansas ad valorem tax refunds, with interest, to the appropriate pipelines, for the period from 1983 to 1988. In its January 28, 1998 Order Clarifying Procedures [82 FERC ¶ 61,059 (1998)], the Commission stated that producers (i.e., First Sellers) could file dispute resolution requests with the Commission, asking the Commission to resolve the dispute with the pipeline over the amount of Kansas ad valorem tax refunds owed.

Any person desiring to be heard or to make any protest with reference to any of these petitions should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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, 385.211, 385.1105, and 385.1106). 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20206 Filed 7–28–98; 8:45 am]

BILLING CODE 6717–01–M

[1] See: 80 FERC ¶ 61,264 (1997); rehearing denied January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–677–000]

Columbia Gas Transmission Corporation; Notice of Application

July 23, 1998.

Take notice that on July 21, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030 filed, in Docket No. CP98–677–000, an application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for a temporary and permanent certificate of public convenience and necessity to construct approximately 1,030 feet of 20-inch pipeline on new right-of-way; and abandon in place approximately 750 feet of existing 20-inch pipeline, and 200 feet of well line in Kanawha County, West Virginia, as more fully set forth in the application which is on file with the Commission and open to public inspection.

On June 30, 1998, Columbia discovered that a weather-induced landslide had damaged a part of an existing right of way and a section of pipeline in its Coco ''A'' Storage Field. As a result of the damage, Columbia immediately removed the pipeline from service. Columbia is seeking immediate authorization to relocate the damage section of pipeline from its original right-of-way with like-size replacement of approximately 1,030 feet in length. Columbia identifies the facilities being replaced and abandoned as Columbia's Line X–52A–F1 (750 feet of existing storage pipeline) and Line X–52A–W7222 (200 feet of 6-inch well line) and appurtenances.

Columbia relates that no further changes to the operational characteristics of this pipeline will be undertaken in connection with this application. Columbia states that the Coco ''A'' Storage Field is an integral component of its pipeline and storage network. Columbia says maintaining the rate of injection is essential in order for Columbia to meet its obligations to its customers November 1, 1998. Columbia maintains that to complete the planned injections by October 31, 1998, the line must be restored to normal service without delay.

Columbia asserts it is not requesting authorization for any new or additional service. Columbia estimates the proposed construction will cost $306,700.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 30, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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 385.211 and 385.214) 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. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary or the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commeters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the 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 abandonments and a grant of the certificate 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 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 Columbia to appear or to be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20200 Filed 7–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–676–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

July 23, 1998.

Take notice that on July 20, 1998, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77057 filed under Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act to abandon in place its Getty Florence Field Line 100. This docket is on file with the Commission and open to public inspection.

The 8.6 miles of line proposed for abandonment was used to transport volumes from the Getty Florence Field in Jennings, Vermillion Parish, Louisiana to a connection with Columbia Gulf's 16-inch South Pecan Lake Lateral Line located in Cameron Parish, Louisiana. The volumes so transported were eventually delivered to Leach, Kentucky for United Fuel Gas Company, predecessor in interest to Columbia Gas Transmission Corporation. Columbia Gulf states that the Florence Field is no longer active, and that the facilities no longer serve a useful purpose. The cost of abandoning the pipeline in place will be $10,300.

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 therefore, 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 filling a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20199 Filed 1–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–357–000]

Gas Transport, Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 23, 1998.

Take notice that on July 20, 1998, Gas Transport, Inc. (GTI) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, to be effective August 1, 1998:

Fifth Revised Sheet No. 162
Fourth Revised Sheet No. 162A

GTI states that the purpose of this filing is to incorporate Version 1.2 of the GISB Standards by reference effective August 1, 1998, in compliance with Order No. 587–G, Standards for Business Practices of Interstate Natural Gas Pipelines.

GTI states that copies of this filing were served upon its jurisdictional customers and the Regulatory Commissions of the states of Ohio and West Virginia.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20205 Filed 7–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. SA98–96–000, SA98–97–000, SA98–98–000, SA98–99–000, SA98–100–000 (Not Consolidated)]

IMC Global, Inc.; Notice of Petitions for Dispute Resolution and Adjustment

July 23, 1998.

Take notice that on July 15, 1998, IMC Global, Inc. (IMC) filed the above-referenced petitions, pursuant to section 502(c) of the Natural Gas Policy Act of 1978. IMC's petitions, for various reasons, reject (in whole or in part) the Kansas ad valorem tax refund claims made by the pipelines listed below.

Pipeline	Docket No.
Colorado Interstate Gas Company.	SA98–96–000
Northern Natural Gas Company.	SA98–97–000
Williams Gas Pipelines Central, Inc.	SA98–98–000

Pipeline	Docket No.
K N Interstate Gas Transmission Company.	SA98–99–000
Panhandle Eastern Pipe Line Company.	SA98–100–000

If adjustment relief becomes necessary (i.e., if the Commission determines that IMC owes Kansas ad valorem tax refunds to one or more of the subject pipelines), IMC requests to be relieved from making the refunds attributable to royalties, on the ground that such refunds are now uncollectible, owing to the enactment of section 7 of House Bill No. 2419, by the State of Kansas. IMC's petitions are on file with the Commission and they are open to public inspection.

The Commission, by order issued September 10, 1997, in Docket No. RP97–369–000 *et al.*,[1] on remand from the D.C. Circuit Court of Appeals,[2] directed First Sellers to make Kansas ad valorem tax refunds, with interest, to the appropriate pipelines, for the period from 1983 to 1988. In its January 28, 1998 Order Clarifying Procedures [82 FERC ¶ 61,059 (1998)], the Commission stated that producers (i.e., First Sellers) could file dispute resolution requests with the Commission, asking the Commission to resolve the dispute with the pipeline over the amount of Kansas ad valorem tax refunds owed.

Any person desiring to be heard or to make any protest with reference to any of these petitions should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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, 385.211, 385.1105, and 385.1106). 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20207 Filed 7–28–98; 8:45 am]

BILLING CODE 6717–01–M

[1] See: 80 FERC ¶ 61,264 (1997); rehearing denied January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–356–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 23, 1998.

Take notice that on July 17, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fifth Revised Sheet No. 9, to be effective August 16, 1998.

MRT states that the purpose of this filing is to provide for recovery of additional prior period adjustments to MRT's Account No. 191 balance, representing amounts paid by MRT to resolve litigation involving pre-Order No. 636 gas purchase contracts, pursuant to Sections 16.2(b) and (c) of the General Terms and Conditions of MRT's Tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20204 Filed 7–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2696–006]

Niagara Mohawk Power Corp. Late-Filed Request for Rehearing Rejected

July 23, 1998.

On May 29, 1998, the Commission issued an order accepting the surrender of a license for the Stuyvesant Falls Hydroelectric Project No. 2696 from Niagara Mohawk Power Corporation.[1] On July 1, 1998, New York Rivers United filed a request for rehearing of the Commission's order, and of the Final Environmental Assessment (EA) issued in connection with the surrender order.[2]

Section 313(a) of the Federal Power Act requires an aggrieved party to file its request for rehearing within 30 days after issuance of a Commission order.[3] In this instance, the deadline for filing a request for rehearing was June 29, 1998. Because the rehearing deadline is statutorily based, and New York Rivers United did not file its request within the statutorily prescribed period, its request for rehearing must be rejected. The Final EA was attached to, and issued with, the order. The fact that a Notice of Availability of the Final EA was issued on June 1, 1998, does not extend the statutory deadline for requesting rehearing of the order.

This notice constitutes final agency action. Requests for rehearing of this notice may be filed within 30 days of the date of issuance of this notice, pursuant to Rule 713 of the Commission's Rules of Practice and Procedure.[4]

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20202 Filed 7–28–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 83 FERC ¶ 61,226.

[2] There is no provision under applicable statutes or regulations for requesting rehearing of a Final EA.

[3] 16 U.S.C. 825*l*.

[4] 18 CFR 385.713 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–672–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

July 23, 1998.

Take notice that on July 16, 1998, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–672–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct certain facilities in Howard County, Arkansas, under NGT's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001 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.

Specifically, NGT proposes to install a 6-inch tap on its Line AC in Pike County and construct approximately 16.7 miles of 6-inch pipe (Line ACT–5) to deliver additional gas to an existing customer in Howard County. NGT states that it will install this tap, Line ACT–5, a 6-inch meter station and four 2-inch first-cut regulators to provide an incremental delivery of 3,000 Dth to James Hardie Gypsum, Inc. (Hardie Gypsum). NGT estimates the peak day and annual deliverability of gas through these facilities to be 8,000 Dth and 2.9 million Dth, respectively. The estimated cost of the facilities to be installed is approximately $2.2 million.

NGT states that in lieu of reimbursement to NGT, Hardie Gypsum has executed a transportation agreement with initial contract demand of 3,000 Dth per day and a primary term extending through December 31, 2010. NGT states that it currently delivers 5,000 Dth to Hardie Gypsum through Line AM–165, but will file to abandon and relocate that point to Line ACT–5 upon completion of Hardie Gypsum's plant expansion.

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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20198 Filed 7–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–601–001]

Northwest Pipeline Corporation; Notice of Amendment

July 23, 1998.

Take notice that on July 15, 1998, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP98–601–001 an amendment to the pending request filed on June 9, 1998, in Docket No. CP98–601–000, to reflect changes in the facilities originally proposed and other related aspects of the project, under Northwest's blanket certificate issued in Docket No. CP82–433–000 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.

Northwest proposed in its original request to construct and operate approximately 2.8 miles of 6-inch loop line on its Moscow Lateral in Whitman County, Washington and to upgrade its Moscow Meter Station in Latah County, Idaho to better accommodate existing firm service delivery obligations to the Washington Water Power Company (Water Power).

Northwest states that as originally proposed, the new 6-inch loop line on the Moscow Lateral would commence at a new 6-inch tap on the existing 12-inch Lewiston Lateral, adjacent to the existing 4-inch Moscow Lateral tap and terminate at milepost 2.8 on the Moscow Lateral with a tie-in valve installed at the terminus of the loop line.

Northwest states that because the landowner has expressed concern regarding its proposal to locate the site for the tie-in valve in the middle of a field he uses for agricultural purposes, Northwest has redesigned the loop line and with the approval of the landowner proposes to install the tie-in valve at a site near the edge of the landowner's property. Northwest states that the proposed loop line will now terminate at milepost 2.39 on the Moscow Lateral and will be approximately 2,221 feet shorter in length than the loop line as originally proposed.

Northwest states that as a result of the proposed change, the maximum design capacity of the Moscow Lateral and loop line will increase from approximately 8,300 Dth per day to approximately 9,500 Dth per day. Northwest states that even though the proposed maximum design capacity has decreased by approximately 300 Dth per day from its original proposal, Northwest believes that the Moscow Lateral and proposed loop line will still have sufficient capacity to meet Water Power's projected market growth downstream of the Moscow Meter Station through the year 2001.

Northwest states that it had originally proposed to use temporary work space at four locations along the 75-foot wide Moscow Lateral right-of-way, but will now only need temporary work space at three locations.

Northwest states the estimated cost of constructing the loop line and the Moscow Meter Station will decrease from approximately $1,634,617 to approximately $1,484,617.

Northwest states that all other pertinent information as stated in its original prior notice request filed in Docket No. CP98–601–000 remain accurate as previously filed.

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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20197 Filed 7–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP93–5–030 and RP93–96–010]

Northwest Pipeline Corporation; Notice of Refund Report

July 23, 1998.

Take notice that on July 17, 1998, Northwest Pipeline Corporation, (Northwest) tendered for filing a corrected refund report to replace in its entirety the refund report filed on June 29, 1998 in the above-referenced dockets.

Northwest states that the June 29 filing indicated that refunds totaling $29,030,148 were made to Northwest's customers on June 26, 1998. Northwest states that the corrected total amount is $29,138,955 (which includes the $108,278) correction plus $529 in additional interest on the $108,278). Northwest states that it is distributing the $108,807 to its customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 29, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20203 Filed 7–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

[Docket No. TX96–7–001]

City of Palm Springs, California; Show Cause Order

Issued July 16, 1998.

The City of Palm Springs, California (Palm Springs), Enron Power Marketing, Inc. (Enron), and the Electricity Consumers Resource Council and the American Iron and Steel Institute (jointly ELCON) have requested rehearing of our order (July 31 order) [1] finding that Southern California Edison Company (SoCal Edison) was not obligated to provide certain transmission service to Palm Springs. In this order, we ask the parties to show cause why subsequent events in California have not rendered the requests for rehearing moot and subject to dismissal.

Discussion

On March 1, 1996, Palm Springs filed an application requesting that the Commission order SoCal Edison to provide Palm Springs with firm network transmission service under sections 211 and 212 of the Federal Power Act.[2] In short, Palm Springs stated that it wished to provide service to retail electricity consumers within the city limits of Palm Springs by installing only the meters and related equipment necessary to measure and deliver its electric power and energy. In our July 31 order, we denied Palm Springs' application because Palm Springs did not meet the requirements of section 212(h),[3] and because ordering SoCal Edison to provide the requested service would be contrary to the public interest in violation of section 211(a).[4] As noted above, Palm Springs, Enron, and ELCON have sought rehearing of our findings in the July 31 order. In an order issued on September 19, 1996, the Commission granted rehearing for the limited purpose of further consideration to give itself additional time for consideration of the matters raised.

We believe that these requests for rehearing may now be moot given the enactment of comprehensive electricity restructuring legislation in California,[5] its implementation by the California Commission, and the actual operation of the California Independent System Operator (ISO) and the California Power Exchange (PX) as of March 31, 1998. Specifically, in implementing AB 1890, the California Commission rejected a phase-in of retail competition in favor of an approach that generally allows all California electricity consumers (regardless of customer class or size of load) direct access to alternate suppliers at the same time.[6] Additionally, this Commission gave necessary approvals for the start-up of the ISO and PX,[7] which, as noted above, began operation on March 31, 1998. In light of these fundamental changes since the time the requests for rehearing were filed, the service requested by Palm Springs in its application under sections 211 and 212 appears to be unnecessary. Under the restructured California market, access to alternate suppliers is now permitted for each and every electricity consumer in the state, including all consumers residing in Palm Springs. Accordingly, there appears to be no reason for Palm Springs to continue to pursue its plan to install its own meters and seek a section 211 transmission order to gain access to alternate suppliers on behalf of electricity consumers in Palm Springs, as these electricity consumers already enjoy access to alternate suppliers through another process.[8] Thus, we are considering dismissing the requests for rehearing in Docket No. TX96–7–001 as moot.

Before taking this action, we will afford the parties who filed requests for rehearing in Docket No. TX96–7–001 an opportunity to show cause why the Commission should not dismiss their rehearing requests and why there is still a need for the Commission to address the merits of the pending rehearing requests. Accordingly, these parties may file written responses within 30 days of issuance of this order addressing this issue. An original and 14 copies of any such responses should be sent to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should reference Docket No. TX96–7–001.

The Commission Orders

Within 30 days of the date of issuance of this order, the parties to the requests for rehearing in Docket No. TX96–7–001 may file responses explaining why the Commission should or should not

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[1] City of Palm Springs, California, 76 FERC ¶61,127 (1996).

[2] 16 U.S.C. 824j–k (1994).

[3] We found, among other things, that Palm Springs' plan to install only meters and related equipment would not meet the statutory requirement in section 212(h)(2)(B) that it ''utilize transmission or distribution facilities that it owns or controls to deliver all such electric energy to such electric consumer.'' 76 FERC at 61,701–3.

[4] This was because granting the application would allow Palm Springs to evade the then-current plans of the California Public Utilities Commission (California Commission) to phase-in retail competition over several years and to impose a competition transition charge, and because it might encourage forum shopping. *id.* at 61,703–4.

[5] This legislation (Assembly Bill No. 1890 or AB 1890) was approved by the California Assembly on August 30, 1996 and the California Senate on August 31, 1996, and was signed into law by the Governor of the State of California on September 23, 1996.

[6] *See* Order Instituting Rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation; Order Instituting Investigation on the Commission Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation, Decision 97–05–040 (May 6, 1997), 177 PUR4th 1 at 12–29 (1997), *modified*, Decision 97–12–131 (December 30, 1997), _______ PUR4th _______ (1997), 1997 Cal. PUC LEXIS 1227 (orders providing for direct access for all consumers once the ISO and PX are operational, as there are no operational or other technological considerations requiring the phase-in of direct access).

[7] *See* Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company, 81 FERC ¶ 61,122 (1997), *order denying clarification*, 83 FERC ¶ 61,033 (1998).

[8] We note that Palm Springs is free, under California law, to seek to aggregate the loads of electricity consumers in Palm Springs in order to facilitate the sale and purchase of electricity services. *See, e.g.*, Cal. Pub. Util. Code §§ 331(a) & 366 (West Supp. 1998) (as added by section 10 of AB 1890) (provisions allowing, among other things, for cities to become aggregators of load); 177 PUR4th at 24–25.

dismiss these requests for rehearing, as discussed in the body of this order.

By the Commission.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20244 Filed 7–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–86–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 23, 1998.

Take notice that on July 20, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective July 20, 1998:

Second Revised Volume No. 1
Sixteenth Revised Sheet No. 777
Twenty-fifth Revised Sheet No. 831
Twenty-fourth Revised Sheet No. 832

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20201 Filed 7–28–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3749–000, et al.]

Kansas City Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

July 21, 1998.

Take notice that the following filings have been made with the Commission:

1. Kansas City Power & Light Company

[Docket No. ER98–3749–000]

Take notice that on July 16, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement dated June 24, 1998, between KCPL and Tractebel Energy Marketing, Inc.

KCPL proposes an effective date of July 6, 1998 and requests a waiver of the Commission's notice requirement to allow the requested effective date. This Agreement provides for the rates and charges for Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas City Power & Light Company

[Docket No. ER98–3750–000]

Take notice that on July 16, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement dated June 24, 1998, between KCPL and Tractebel Energy Marketing, Inc.

KCPL proposes an effective date of July 6, 1998, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Duquesne Light Company

[Docket No. ER98–3751–000]

Take notice that on July 16, 1998, Duquesne Light Company (DLC), filed a Firm Point-To-Point Transmission Service Agreement dated June 23, 1998 with PECO, under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds PECO as a customer under the Tariff.

DLC requests waiver of the Commission's sixty-day notice requirement and an effective date of June 23, 1998, for the Service Agreement.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Company

[Docket No. ER98–3752–000]

Take notice that on July 16, 1998, Arizona Public Service Company (APS), tendered for filing an Umbrella Service Agreement to provide Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with Citizens Power Sales.

A copy of this filing has been served on Citizens Power Sales and the Arizona Corporation Commission.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. MidAmerican Energy Company

[Docket No. ER98–3754–000]

Take notice that on July 16, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309 tendered for filing proposed changes in its Rate Schedule FERC No. 21. Such change is comprised of a First Amendment dated June 22, 1998 to Interchange Agreement dated July 26, 1984 and entered into by MidAmerican's predecessor, Iowa-Illinois Gas and Electric Company, with the Eldridge Electric and Water Utility Board of the City of Eldridge, Iowa (Eldridge).

MidAmerican states that the First Amendment reflects an increase in the transmission capacity available to Eldridge under Service Schedule G of the Interchange Agreement as a result of the increase in Eldridge's share of generation from Louisa Generating Station from 3.25 MW to 3.5 MW.

MidAmerican proposes an effective date of September 14, 1998, for the rate schedule change.

Copies of the filing were served upon representatives of Eldridge, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. MidAmerican Energy Company

[Docket No. ER98–3755–000]

Take notice that on July 16, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement with Northern/AES Energy, L.L.C. (Northern) dated July 2, 1998, and Non-Firm Transmission Service Agreement with Northern dated July 2, 1998, and El Paso Energy Marketing Company (El Paso) dated June 26, 1998, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of July 2, 1998, for the Agreement with Northern, and June 26, 1998, for the Agreement with El Paso, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Northern, El Paso, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER98–3756–000]

Take notice that on July 16, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Morgan Stanley Capital Group, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 8, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of June 20, 1998, for the Service Agreement.

Copies of the filing were served upon Morgan Stanley Capital Group, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER98–3757–000]

Take notice that on July 16, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Citizens Power Sales under the Open Access Transmission Tariff to Eligible Purchasers dated June 15, 1998. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon Citizens Power Sales, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER98–3758–000]

Take notice that on July 16, 1998, Southern California Edison Company (Edison), tendered for filing amendments to existing firm transmission service agreements (Amendments) between Edison and the City of Banning, California (Banning).

The Amendments convert transmission loss provisions in the existing agreements to the California Independent System Operator's (ISO) Tariff loss provisions, pursuant to Section 6.2.1.5 of the Edison-Banning 1997, Restructuring Agreement (Restructuring Agreement).

Edison is requesting that the Amendments become effective on April 1, 1998, the date the ISO assumed operational control of Edison's transmission facilities, which is concurrent with the effective date of the Restructuring Agreement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Portland General Electric Company

[Docket No. ER98–3759–000]

Take notice that on July 16, 1998, Portland General Electric Company tendered for filing pursuant to Section 205 of the Federal Power Act revisions to its transmission and ancillary services rates under its open-access transmission tariff, FERC Electric Rate Schedule No. 8.

Portland General Electric Company has requested an effective date of September 14, 1998.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Puget Sound Energy, Inc.

[Docket No. ER98–3770–000]

Take notice that on July 16, 1998, Puget Sound Energy, Inc., (PSE), as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with PG&E Energy Trading (PG&E), as Transmission Customer.

PSE requests that the Commission waive prior notice requirements and requests an effective date of July 17, 1998, for the service agreements.

A copy of the filing was served upon PG&E.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER98–3771–000]

Take notice that on July 16, 1998, Virginia Electric and Power Company (Virginia Power or the Company), tendered for filing a proposed amended and restated market-based sales tariff. The proposed tariff is intended to replace Virginia Power's currently effective market-based sales tariff with an early proposed effective date commensurate with the date of the filing.

Virginia Power states that the purpose of the filing is to amend its authorization to make sales of capacity and/or energy at market-based rates and to resell transmission service on a short-term or long-term basis by more closely reflecting the terms and conditions of other such tariffs that have been recently approved by the Commission. Virginia Power states that the tariff filing has no impact on rates, and that several customers have requested Virginia Power to make the filing in order to simplify the terms and conditions.

Under the proposed tariff, Virginia Power will not make such market-based sales to any affiliate without first receiving authorization from the Commission under Section 205 of the Federal Power Act. Also, Virginia Power will not provide capacity and/or energy to loads located within its service territory consistent with the uncontested offer of settlement certified to the Commission in Docket No. ER97–3561–000.

Moreover, the proposed tariff does not provide for transmission or ancillary services, which are provided for on an unbundled basis under Virginia Power's Open Access Tariff. Finally, the tariff retains the commitment to file a study of market power in Virginia Power's generation market within the time frame ordered in connection with the Company's currently effective market-based sales tariff provided for in the September 11, 1997, Order issued in Docket No. ER97–3561–000.

Virginia Power further states that a copy of this tariff filing has been served on all customers that are receiving service under Virginia Power's currently effective market-based sales tariff and all parties of record in Docket No. ER97–3561–000, and is otherwise posted as required by the Commission's Regulations.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Carolina Power & Light Company

[Docket No. ER98–3780–000]

Take notice that on July 16, 1998, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with the following customer: Tennessee Valley Authority. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Carolina Power & Light Company

[Docket No. ER98–3781–000]

Take notice that on July 16, 1998, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Commonwealth Edison Company under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Public Service Company of New Mexico

[Docket No. ER98–3782–000]

Take notice that Public Service Company of New Mexico (PNM) tendered for filing on July 19, 1998, a mutual netting/close-out agreement between PNM and E Prime (E Prime).

PNM requested waiver of the Commission's notice requirement so that service under the PNM/netting agreement may be effective as of July 17, 1998.

Copies of the filing were served on E Prime and the New Mexico Public Utility Commission.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20245 Filed 7–28–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100139; FRL–6017–2]

Systems Integration Group, Inc. and Micrographic Specialties, Inc. Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Systems Integration Group, Inc. and its subcontractor, Micrographic Specialties, Inc. have been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Systems Integration Group, Inc. and its subcontractor Micrographic Specialties Inc. consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(I)(2), and will enable Systems Integration Group, Inc. and its subcontractor to fulfill the obligations of this contract.

DATES: Systems Integration Group, Inc. and its subcontractor Micrographics Specialties, Inc. will be given access to this information no sooner than August 3, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: C. Jean Sadlowe, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number; Rm. 230, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5362; e-mail: sadlowe.jean@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract No. GS–35F–4713G, Order Nr. 8W–0319–NBSX, Systems Integration Group, Inc. will provide imaging, micrographic, and blowback services for the Office of Pesticide Programs. The documents to be imaged/filmed include pesticide labels, pesticide studies submitted to the Office of Pesticide Programs, pesticide incident reports, and EPA generated scientific reviews of submitted studies.

Some of the information included in these documents may be entitled to confidential treatment. The information has been submitted to EPA under sections 3,4, and 6 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Systems Integration Group, Inc. prohibits the use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency, and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security manual. In addition, Systems Integration Group, Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release of compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs.

All information provided to Systems Integration Group, Inc. by EPA for use in connection with this contract will be returned to EPA when Systems Integration Group, Inc. has completed its work.

List of Subjects

Environmental Protection, Transfer of data.

Dated: July 22, 1998.

Linda A. Travers,

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 98–20285 Filed 7–28–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6131–9]

Proposed CERCLA Prospective Purchaser Agreement for the H. Brown Company, Inc. Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal of CERCLA Prospective Purchaser Agreement for the H. Brown Company, Inc. Superfund Site.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99–499, notification is hereby given that a proposed prospective purchaser agreement (PPA) for the H. Brown Company, Inc. Superfund Site (Site) located in Walker, Michigan, has been executed by DBV Partners, L.L.C. The proposed PPA has been submitted to the Attorney General for approval. The proposed PPA would resolve certain potential claims of the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against DBV Partners, L.L.C. The proposed PPA would pay to the United States $290,000 to be applied toward outstanding response costs incurred by the United States in conducting a Remedial Investigation and Feasibility Study and the initial Remedial Design at the Site. THe Site is on the National Priorities List, and EPA is negotiating with potentially responsible parties to implement the remedy, which includes redevelopment of the Site, set forth in the Record of Decision.

DATES: Comments on the proposed PPA must be received by U.S. EPA on or before August 28, 1998.

ADDRESSES: A copy of the proposed PPA is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Cynthia A. King at (312) 886–6831, prior to visiting the Region 5 office.

Comments on the proposed PPA should be addressed to Cynthia A. King, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Cynthia A. King at (312) 886–6831, of the U.S. EPA Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this notice, is open for comments on the proposed PPA. Comments should be sent to the addressee identified in this document.

Richard Karl,

Acting Director, Superfund Division, Region 5.

[FR Doc. 98–20287 Filed 7–28–98; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: In accordance with the Paperwork Reduction Act of 1995, the Export-Import Bank of the United States (Ex-Im Bank) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved collection described below. A request for public comment was published in 63 FR No. 87, 25042, May 6, 1998. No comments were received.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank) is soliciting comments from members of the public concerning the proposed collection of information that is gathered annually under Executive Order 12862. This order requires that the Export-Import Bank of the United States (Ex-Im Bank) respond to the U.S. Congress on how it is meeting the needs of its customers. Annually Ex-Im Bank uses its Customer Service Satisfaction Form to gather data on how it is meeting the needs of its customers (U.S. exporters) and to also gather data on how it may improve the quality of its overall service. The survey is sent to 1200 U.S. exporters each year.

DATES: Interested persons are invited to submit comments on or before August 28, 1998.

ADDRESSES: Comments and recommendations concerning this submission should be sent to OMB Desk Officer, Victoria Wassmer, Office of Management and Budget, Information and Regulatory Affairs, New Executive Office Building, Washington, D.C. 20503, (202) 395–5871.

FOR FURTHER INFORMATION CONTACT: Copies of these submissions and any additional information may be obtained from Daniel Garcia, Export-Import Bank of the United States, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3335.

SUPPLEMENTARY INFORMATION:

Abstract

OMB 3048–0011. One application (survey) falls under this collection, EIB 95–7, Export-Import Bank Customer Service Satisfaction Form. The request to OMB is for an extension of the currently approved form.

Burden Statement Summary

Type of request: Extension of expiration date.

OMB Number: 3048–0011.

Form Number: EIB 95–7.

Title: EIB 95–7, Export-Import Bank Customer Service Satisfaction Form.

Frequency of Use: Annually.

Respondents: U.S. exporters.

Estimated total number of annual responses: 400.

Estimated total number of hours needed to fill out the form (per respondent): 20 minutes.

Dated: July 24, 1998.

Daniel Garcia,

Agency Clearance Officer.

[FR Doc. 98–20217 Filed 7–28–98; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) submitted to OMB for Review and Approval

July 23, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the

following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 28, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0010.

Title: Ownership Report.

Form Number: FCC 323.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 10,020.

Estimated Time Per Response: 1–7 hours (1 hour per certification: 0.5 hours for respondent+0.5 hours for attorney; 7 hours per annual report and all other reports: 1 hour for respondent + 6 hours for attorney).

Frequency of Response: Annual and on occasion report requirements.

Total Annual Burden: 9,106 hours.

Cost to Respondents: $10,258,410 (Attorney costs and $45.00 fee for annual ownership report/certification).

Needs and Uses: Each permittee of a commercial AM, FM, TV and international broadcast station shall file an Ownership Report (FCC Form 323) within 30 days of the date of grant by the FCC of an application for an original construction permit or the consummation, pursuant to Commission consent, of a transfer of control or an assignment of license. A permittee is also required to file another report or to certify that it has reviewed its current Report on file and that it is accurate, in lieu of filing a new report, when the permittee applies for a station license. Each licensee of a commercial AM, FM and TV broadcast station shall file a Report annually. Each licensee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report. The data are used by FCC staff to determine whether the licensee/permittee is abiding by the multiple ownership requirements as set down by the Commission's Rules and is in compliance with the Communications Act.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–20250 Filed 7–28–98; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 98–1394]

Federal-State Joint Board on Universal Service Open Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: The Federal-State Joint Board on Universal Service will convene an open meeting, on Wednesday, July 29, 1998, from 12:30 p.m. to 3 p.m., in the Westin Seattle Hotel, 1900 Fifth Ave., Seattle, WA, 98101. At the meeting, the Federal-State Joint Board will address issues contained in the Commission's Joint Board Referral. In the Joint Board Referral, the Commission requests that the Joint Board provide a recommended decision on issues pertaining to the appropriate methodology for determining high cost support.

DATES: The meeting will be held on July 29, 1998, from 12:30 to 3 p.m.

ADDRESSES: Westin Seattle Hotel, 1900 Fifth Ave., Seattle, WA, 98101.

FOR FURTHER INFORMATION CONTACT: Emily Hoffnar (202) 418–7396; ehoffnar@fcc.gov or Chuck Keller (202) 418–7380; ckeller@fcc.gov.

Federal Communications Commission.

Lisa Gelb,

Chief, Accounting Policy Division, Common Carrier Bureau.

[FR Doc. 98–20170 Filed 7–28–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–010689–076.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd. (''APL'')
Hapag-Lloyd Container Line GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.

Synopsis: The proposed amendment provides for the establishment of a Class B level of Agreement membership. Class B membership would be available to members who resign from the Agreement but are parties to individual service contracts jointly with other TWRA members. This would permit a resigning member to perform any remaining obligations under service contracts to which it is a party at the time of its resignation. The parties have requested a shortened review period.

Agreement No.: 203–011198–009

Title: Puerto Rico/Caribbean Discussion Agreement.

Parties:

Crowley American Transport
NPR, Inc.
Dole Ocean Liner Express
Sea-Land Service, Inc.

Synopsis: The proposed modification expands the scope of the Agreement to include the U.S. Virgin Islands, Canada, Mexico, Argentina, Brazil, Paraguay, Uruguay, Chile, Ecuador, Peru, and the

Pacific Coast of Colombia, and also restates the basic Agreement.

Agreement No.: 203–011279–012.
Title: Latin America Agreement.
Parties:

Central America Discussion Agreement
Hispaniola Discussion Agreement
U.S./Jamaica Discussion Agreement
Venezuela America Association
Inter-American Freight Conference
Venezuelan Discussion Agreement
Caribbean Shipowners Association
Aruba Bonaire Curacao Liner Association
Puerto Rico/Caribbean Discussion Agreement
The West Coast of South America Agreement
The Colombia Discussion Agreement
The ABC Discussion Agreement
Hanjin Shipping Company, Ltd.
Montemar S.A.
The West Coast of South America Discussion Agreement

Synopsis: The proposed modification expands the scope of the Agreement to include ports and points in Mexico.

By Order of the Federal Maritime Commission.

Dated: July 23, 1998.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 98–20214 Filed 7–28–98; 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 August 12, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Cyrus A. Ansary, Longboat Key, Florida; to retain voting shares of Fort Knox National Bancorp, Inc., Elizabethtown, Kentucky, and thereby indirectly retain voting shares of Fort Knox National Bank, Radcliff, Kentucky.

Board of Governors of the Federal Reserve System, July 23, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–20179 Filed 7-28-98; 8:45 am]

BILLING CODE 6210-01-F

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 August 13, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Peter D. and Patricia A. Baichi, Solvay, New York; to acquire additional voting shares of Solvay Bank Corp., Solvay, New York, and thereby indirectly acquire additional voting shares of Solvay Bank, Solvay, New York.

Board of Governors of the Federal Reserve System, July 24, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–20269 Filed 7–28–98; 8:45 am]

BILLING CODE 4160–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-15776) published on pages 32661-32662 of the issue for Monday, June 15, 1998.

Under the Federal Reserve Bank of Chicago heading, the entry for Banc One Corporation and Banc One Corporation (DE), both of Columbus, Ohio, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Banc One Corporation (''Banc One'') and Banc One Corporation (DE) (''Banc One DE'') both of Columbus, Ohio; to merge with First Chicago NBD Corporation, Chicago, Illinois (''FCNBD''), and thereby acquire all of FCNBD's subsidiary banks: American National Bank and Trust Company, Chicago, Illinois; FCC National Bank, Wilmington, Delaware; NBD Bank, Detroit, Michigan; NBD Bank, NA, Indianapolis, Indiana; First National Bank of Chicago, Chicago, Illinois; NBD Bank, Venice, Florida; and NBD Bank, Elkhart, Indiana. Banc One and Banc One DE also have requested the Board's approval to hold and exercise options to purchase up to 19.9 percent of the voting shares of FCNBD, if certain events occur. Banc One and Banc One DE may form one or more intermediate bank holding companies.

In connection with the proposed transaction, Banc One and Banc One DE also have provided notice to acquire all of the nonbanking subsidiaries of FCNBD and to engage, directly or indirectly, in all of the nonbanking activities that FCNBD is currently authorized by the Board to conduct. The nonbanking activities, and the subsidiaries of FCNBD engaged in these activities, are described in the notice filed by Banc One and Banc One DE with the Board.

Banc One and Banc One DE also would continue to engage in all of the nonbanking activities in which Banc One is currently authorized by the Board to conduct. The nonbanking activities and the companies conducting these activities are described in the notice filed with the Board.

The comment period on this application has been extended until August 13, 1998.

Board of Governors of the Federal Reserve System, July 23, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–20180 Filed 7-28-98; 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 August 21, 1998.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Banque Nationale de Paris, Paris, France; to acquire 45 percent of First Hawaiian, Inc., Honolulu, Hawaii, and thereby indirectly acquire First Hawaiian Bank, Honolulu, Hawaii, and Pacific One Bank, Portland, Oregon.

2. First Hawaiian, Inc., Honolulu, Hawaii; to merge with Banc West Corporation, San Francisco, Calfornia, and thereby indirectly acquire Bank of the West, Walnut Creek, California.

Board of Governors of the Federal Reserve System, July 23, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–20181 Filed 7-28-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-19607) published on pages 39570-39571 of the issue for Thursday, July 23, 1998

Under the Federal Reserve Bank of Minneapolis heading, the entry for Norwest Corporation, Minneapolis, Minnesota, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Norwest Corporation, Minneapolis, Minnesota (Norwest); to acquire and merge with Wells Fargo & Company, San Francisco, California (Wells Fargo), and thereby acquire all of the bank subsidiaries of Wells Fargo, which include Wells Fargo Bank, N.A., San Francisco, California; Wells Fargo Bank (Texas), N.A., Houston, Texas; Wells Fargo Bank (Arizona), N.A., Phoenix, Arizona; Wells Fargo Bank, Ltd., Los Angeles, California; Wells Fargo Central Bank, Calabasas, California; and Wells Fargo HSBC Trade Bank, N.A., San Francisco, California. On consummation of the proposed transaction, Norwest Corporation would be renamed Wells Fargo & Company. Norwest would continue to control all of its existing bank and nonbank subsidiaries.

In connection with the proposed transaction, Norwest also proposes to acquire all of the nonbank subsidiaries of Wells Fargo and to engage, directly or indirectly through such nonbank subsidiaries, in a variety of nonbanking activities that previously have been determined to be permissible for bank holding companies. The nonbanking companies that Norwest proposes to acquire are listed in the notice filed with the Board and include Crocker Life Insurance Company, Concord, California, and Wells Fargo Equity Capital, Inc., San Francisco, California. The nonbanking activities of the companies to be acquired also are listed in the notice and include extending credit and servicing loans, pursuant to 12 CFR 225.28(b)(1); and acting as principal, agent, or broker in connection with the sale of credit-related insurance, pursuant to 12 CFR 225.28(b)(11); and engaging in all activities that Wells Fargo currently is authorized to conduct.

In connection with the proposed transaction, Norwest also has provided notice under 12 CFR 211.5(c)(3) to acquire FIL Holding Company, and First Interstate Services Co. (UK), London, United Kingdom.

Norwest also has applied to acquire an option to purchase up to 19.9 percent of the outstanding shares of Wells Fargo's common stock. The option would expire upon consummation of the merger.

Comments regarding this application must be received not later than August 21, 1998.

Board of Governors of the Federal Reserve System, July 23, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–20182 Filed 7-28-98; 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 August 24, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Vail Banks, Inc., Vail, Colorado; to merge with Telluride Bancorp, Ltd., Montrose, Colorado, and thereby indirectly acquire Western Bank of Colorado, Norwood, Colorado, and Bank of Telluride, Telluride, Colorado.

Board of Governors of the Federal Reserve System, July 24, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–20271 Filed 7-28-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 13, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First Charter Corporation, Concord, North Carolina; to acquire HFNC Financial Corp., Charlotte, North Carolina, and thereby indirectly acquire Home Federal Savings and Loan Association, Charlotte, North Carolina, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 24, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–20270 Filed 07-28-98; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for Jail STD Prevention Monitoring Project Program Announcement #707 Supplemental, meeting.

Times and Dates: 8:30–9 a.m., August 13, 1998 (Open); 9 a.m.–4:30 p.m., August 13, 1998 (Closed).

Place: National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, Building 11, Room 2214, Atlanta, Georgia 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement # 707 Supplemental.

Contact Person for More Information: John R. Lehnnherr, Chief, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025.

Dated: July 23, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 98–20220 Filed 7–28–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for Measuring the Risk for Transmittal and Sequelae from Chlamydial Disease in the Era of Amplification Testing, Program Announcement # 98094, meeting.

Times and Dates: 8:30–9 a.m., September 8, 1998 (Open); 9 a.m.–4:30 p.m., September 8, 1998 (Closed); 9 a.m–4:30 p.m., September 9, 1998 (Closed); 9 a.m.–4:30 p.m., September 10, 1998 (Closed).

Place: National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, Building 10, DQ Conference Room, Atlanta, Georgia 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement # 98094.

Contact Person for More Information: John R. Lehnnherr, Chief, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025.

Dated: July 23, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 98–20221 Filed 7–28–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Savannah River Site Health Effects Subcommittee (SRS).

Times and dates: 8:30 a.m.–5:15 p.m., August 13, 1998. 8:30 a.m.–12 noon, August 14, 1998.

Place: Holiday Inn Select, 130 Clairemont Avenue, Decatur, Georgia 30030, telephone 404/371–0204, fax 404/377–2726.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and

Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS has delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction, and serve as a vehicle for communities, American Indian Tribes, and labor to express concerns and provide advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: Agenda items include: presentations from the Radiological Assessments Corporation on the SRS Dose Reconstruction, Phase II—An Overview of the Project; the National Center for Environmental Health (NCEH) regarding current activities and the National Institute for Occupational Safety and Health will provide updates on the progress of current studies; and working group updates from the subcommittee.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paul G. Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724, telephone 770/488–7040, fax 770/488–7044.

Dated: July 22, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–20222 Filed 7–28–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Child Support Enforcement Financial Report and Program Quarterly Report of Collections.

OMB No.: New.

Description: This report is used by States to report the collections of child support payments made under Title IV–D of the Social Security Act during each fiscal quarter. The form also reports the portion of the collected payments to be distributed to the custodial parent or to the Federal or State governments. The information is used to calculate quarterly grant awards, annual incentive payments to the States and is published in an annual report to Congress.

Respondents: States, Puerto Rico, Guam, Virgin Islands and the District of Columbia.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
396A	54	4	8	1,728
34A	54	4	8	1,728

Estimated Total Annual Burden Hours: 3,456.

Additional Information: AC is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by September 1, 1998. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Bob Sargis at (202) 690–7275.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for AC, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Dated: July 23, 1998.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 98–20254 Filed 7–28–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Safety Risk Assessment Clearinghouse; Open Meeting and Technical Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) and the Joint Institute for Food Safety and Applied Nutrition (JIFSAN) are announcing a meeting entitled ''Food Safety Risk Assessment: Users and Needs'' and a technical workshop entitled ''Food Safety Risk Assessment Clearinghouse: Development of a Framework,'' open to the public, to discuss the formation of a Food Safety Risk Assessment Clearinghouse. The May 1997 Report to the President on the National Food Safety Initiative described the need to establish a clearinghouse that would collect and catalogue available data and methodology pertinent to microbial risk-assessment offered by the private sector, trade associations, Federal and State agencies, and international sources. The goals of the clearinghouse would be to consolidate research data and methodology from public and proprietary sources, assist in coordinating research activities, identify gaps in needed research, and assist in the development of microbial risk assessment models. The first meeting will provide an overview of risk assessment, introduce the concept of a risk assessment clearinghouse, and identify and solicit the needs of potential users. The second meeting, in workshop format, will focus on constructing a draft framework document that will define the scope, objectives, mechanisms, and output of the clearinghouse.

Date and Time: The meeting will be held on August 7, 1998, 8:30 a.m. to 5 p.m. The technical workshop will be held on October 5 and 6, 1998, 9 a.m. to 5 p.m.

Location: The meeting and the technical workshop will be held at the University of Maryland, Stamp Student Union Building ''Atrium,'' College Park, MD.

Contact: Roberta Morales, VA–MD Regional College of Veterinary Medicine, University of Maryland, College Park, MD 20742–3711, 301–935–6083, ext. 158, FAX 301–935–0149.

Registration: Send registration information for both the meeting and the workshop (name, title, firm name, address, telephone and fax numbers) to Jacqueline M. Williams, Center for Food Safety and Applied Nutrition (HFS–315), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4224, FAX 202–205–4422, or register on-line at ''http://www.foodsafety.gov/~mow/jifsan.html''. There is no registration fee.

If you need special accommodations due to a disability, please contact Roberta Morales at least 7 days in advance.

SUPPLEMENTARY INFORMATION: On January 25, 1997, the President announced the National Food Safety Initiative. As a part of this initiative, the development of methods and models directed for enhanced food safety risk assessment, particularly for microbiological pathogens and their toxins were identified as priority needs.

Risk assessment characterizes the nature and magnitude of the risks to human health associated with hazards, and makes clear the assumptions and degree of scientific certainty of the data associated with risk estimates. Risk assessments require specific information on the hazard and on the exposed population to provide meaningful information for those making risk-management decisions. Although risk assessment methods are fairly well established for evaluating chemicals and contaminants in food, risk assessment is far less developed for foodborne pathogens. The May 1997 National Food Safety Report to the President noted that intensive commitment is necessary to develop critically needed methods for analyzing food safety data and addressing its uncertainty, and that methods that account for variability of living microbial pathogens are essential to focus public resources on risks that have the greatest consequences for human health.

A component of this effort has been the establishment of a joint Risk Assessment Consortium of Federal agencies with food safety risk-management responsibilities. The purposes of the consortium are: To advance the science of microbial food safety risk assessment; to serve as advisors for direction and review of Risk Assessment Clearinghouse activities; and to assist agencies in fulfilling their specific food safety mandates. The consortium seeks to comprehensively cover risk assessment activities including solicitation of expertise from risk assessment professionals, scientists, and interested parties from government, industry, consumer organizations, and academia. As a means of assuring that the Risk Assessment Clearinghouse will meet the needs of the diverse clientele it is intended to serve, JIFSAN will take the lead role in the development of the clearinghouse and is seeking comments from interested parties at an open meeting and an open technical workshop. This input will be used to construct a draft framework document that will define the users and their needs, the scope, objectives, mechanisms, and output of the clearinghouse.

JIFSAN is a multi-disciplinary research and education program established by FDA and the University of Maryland in 1996. JIFSAN is a major component of the FDA food safety program's integration with academic institutions to create intellectual partnerships. The JIFSAN includes research and outreach components from the Center for Food Safety and Applied Nutrition (CFSAN), the Center for Veterinary Medicine (CVM), and the University of Maryland. JIFSAN combines resources from the primary Federal public health agency responsible for assuring the safety of the nation's food supply, a research university, and public and private partnerships to provide the scientific basis for assuring a safe, wholesome food supply. JIFSAN provides a neutral environment in which experts from industry, consumer and trade groups, international organizations, government, and academia can pool their resources and ideas to provide the scientific base for the development of sound public health policy.

The meeting and 2-day technical workshop are intended to ensure a wide cross-section of input. The August 7, 1998, meeting will share information on risk assessment applications in relation to food safety concerns by providing an overview of risk assessment and risk analysis, including an historical perspective, terminology, and approaches. Examples of current and potential applications in relation to food uses will be discussed. Through an open forum, input into the needs and expectations of clearinghouse users will be sought. The information obtained at this meeting will be used to help develop a framework for the scope of clearinghouse activities.

At the October 5 and 6, 1998, 2-day technical workshop, an in-depth evaluation by food safety and risk assessment experts and the public of the adequacy of the overall draft framework will be addressed. The workshop will include breakout sessions on topics such as: Systems for cataloguing information; criteria for transparent evaluation of risk assessments; strategies to promote public involvement; solicitation and receipt of voluntary data from industry, government, and other interested parties; systems for protection of the anonymity of proprietary data; user access; information dissemination and output formats; infrastructure needs; implementation priorities; and customer service.

The outcome of the workshop will be a refined framework draft that will be used to guide further development of the clearinghouse. Further opportunities for comment and refinement will be provided.

Final program agendas will be posted on the JIFSAN web page at ''http://www.foodsafety.gov/~mow/jifsan.html''.

Dated: July 24, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–20300 Filed 7–27–98; 4:44 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Relating Numbers of Foodborne Pathogens to Human Illness; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing a public workshop sponsored by the Joint Institute for Food Safety and Applied Nutrition (JIFSAN). This public workshop is being held to explore issues essential to better the general understanding of the risk of illness associated with foodborne microorganisms. The workshop is intended to facilitate a scientific discussion that will serve as a basis for further dialogue with the greater scientific community in structuring approaches to dose-response modeling of foodborne pathogens.

Date and Time: The public workshop will be held on August 4, 1998, 8 a.m. to 5 p.m.

Location: The public workshop will be held at the University of Maryland, Stamp Student Union Building ''Atrium,'' College Park, MD.

Contact: June A. Bradlaw, Center for Food Safety and Applied Nutrition (HFS–508), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 301–594–5883, FAX 301–594–0517.

Registration: Send registration information (name, title, firm name, address, telephone and fax numbers) to Jacqueline M. Williams, Center for Food Safety and Applied Nutrition (HFS–315), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4224, FAX 202–205–4422. Registration should be sent by August 3, 1998, or register on-line at ''http://www.foodsafety.gov/~mow/jifsan.html''. There is no registration fee for this workshop.

If you need special accommodations due to a disability contact June A. Bradlaw at least 7 days in advance.

SUPPLEMENTARY INFORMATION: On January 25, 1997, the President announced the National Food Safety Initiative. As a part of this initiative, a need was recognized for the development of methods and models for enhanced food safety risk assessment, particularly for microbiological pathogens and their toxins.

Risk assessment generally characterizes the nature and magnitude of the risks associated with hazards to human health, and helps to clarify the assumptions and degree of scientific certainty of the data associated with risk estimates. Risk assessments require specific information on the hazard and on the exposed populations to provide meaningful information to public health officials to develop and arrive at risk-management decisions. Although risk assessment methods are fairly well established for evaluating chemicals and contaminants in food, risk assessment is far less developed for foodborne pathogens. The May 1997 National Food Safety report to the President noted that an intensive commitment is necessary to fill this gap and develop critically needed methods for analyzing food safety data and addressing its uncertainty.

A component of this effort has been the establishment of a joint Risk Assessment Consortium of Federal agencies with food safety risk-management responsibilities. The role of the consortium is: To advance the science of microbial food safety risk assessment; to serve as advisors for direction and review of Risk Assessment Clearinghouse activities; and to assist agencies in fulfilling their specific food safety regulatory mandates. Consistent with these goals, JIFSAN will host an open workshop that will explore issues requisite to quantifying the risk of illness associated with foodborne pathogenic microorganisms. Guidance in the development of this workshop has been provided by the Risk Assessment Consortium.

JIFSAN is a multi-disciplinary research and education program established by FDA and the University of Maryland in 1996. JIFSAN is a major component of the FDA's integration with academic institutions to create intellectual partnerships. JIFSAN includes research and outreach components from the Center for Food Safety and Applied Nutrition (CFSAN), the Center for Veterinary Medicine (CVM), and the University of Maryland. JIFSAN combines resources from FDA, the primary Federal public health agency responsible for the safety of the nation's food supply, an established research university, and public and private partnerships to provide the scientific basis for assuring a safe, wholesome food supply. JIFSAN provides a neutral environment in which experts from industry, consumer and trade groups, international organizations, government, and academia can pool their resources and ideas to provide the scientific base for the development of sound public health policy.

The goal of this workshop is to evaluate the current state of science for quantifying dose-response relations for foodborne pathogens and to identify opportunities and alternative sources of information that can be used to develop enhanced dose-response models for conducting microbial risk assessments. Broad areas to be discussed will include: (1) Current modeling of foodborne pathogenic microorganisms, (2) how traditional dose-response models can be adapted to provide better estimates of the severity and likelihood of illness due to foodborne pathogens, and (3) alternative approaches and sources of information for elucidating dose-response relations.

Speakers will consider scientific principles and methods that can be used or adapted to elucidate dose-response relations for microorganisms that are pathogenic in humans. This will include detailed discussion concerning how these relations can be modeled for use in microbial risk assessment. Discussions will focus on how these data, which are often developed for other purposes, can be useful for dose-response models. Emphasis will be placed on modeling susceptible populations, use of animal models and improvement of methods of data collection.

The draft scientific agenda includes the following presentations: Classical and Modern Chemical Dose-Response Models–Concepts and Applications in Risk Assessment; Limitations of Current Dose-Response Models for use in Modeling Dose-Response for Pathogenic Microorganisms; Linking In Vitro, Animal and Human Studies Through Mechanisms of Pathogenesis; Correlating Host Resistance and Susceptibility With Biomarkers From In Vitro, Ex Vivo and Animal Models; Use of Epidemiological Data in Dose-Response Models; Estimation of Infective Dose Based on an Actual Outbreak Investigation; and Suitability of Small Human Clinical Studies to Measure Pathogenesis of Foodborne Pathogens. The agenda also includes open discussion periods during which participants will be encouraged to discuss the merits of different approaches for developing microbial risk assessment dose-response models and to identify additional approaches not identified in the formal presentations.

The workshop will serve as an initial foray into issues and questions surrounding the relationship between the numbers of pathogenic microorganisms consumed and the resultant illness. The workshop is intended to facilitate a scientific discussion that will serve as a basis for further dialogue with the greater scientific community in structuring approaches to dose-response modeling of foodborne pathogens.

The program agenda and workshop abstracts will be posted on the world wide web (WWW) at ''http://www.foodsafety.gov/~mow/jifsan.html''. Verbatim transcripts will also be posted on the WWW after the workshop.

Dated: July 24, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–20299 Filed 7–24–98; 4:44 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0548]

Draft Guidances for Industry on the Development of Antimicrobial Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA's) Office of Drug Evaluation IV (ODE IV), Center for Drug Evaluation and Research (CDER), is announcing the availability of several draft guidance documents on the development of antimicrobial drug products. A general draft guidance document entitled ''Developing Antimicrobial Drugs—General Considerations for Clinical Trials'' discusses issues common to the development of all antimicrobial drugs. The companion draft guidance documents address issues related to developing drugs to treat individual indications. These draft guidance documents are intended to help sponsors design clinical trials that will yield information the agency can use to determine whether the antimicrobial drug under study is safe and effective in the treatment of the specific infection studied. Key elements of these draft guidance documents will be discussed at a July 29, 30, and 31, 1998, Anti–Infective Drugs Advisory Committee meeting.

DATES: Written comments on the draft guidance documents may be submitted by October 27, 1998. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of the draft guidance documents are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm''. Submit written requests for single copies of the draft guidance documents to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance documents to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Renata Albrecht, Center for Drug Evaluation and Research (HFD–590), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2336.

SUPPLEMENTARY INFORMATION: FDA's divisions of Anti–Infective Drug Products, Special Pathogens and Immunologic Drug Products, and Anti–Viral Drug Products in CDER's ODE IV are issuing the first documents in a series of draft guidance documents that are intended to assist sponsors in designing, carrying out, and analyzing the results of clinical trials for the development of antimicrobial drug products. A general draft guidance document entitled ''Developing Antimicrobial Drugs—General Considerations for Clinical Trials'' discusses issues common to all antimicrobial drugs. The companion draft guidance documents address issues related to developing drugs to treat individual indications. Key elements from these draft guidance documents and related issues will be discussed at an Anti–Infective Drugs Advisory Committee meeting on July 29, 30, and 31, 1998 (63 FR 34655, June 25, 1998).

In the **Federal Register** of July 21, 1998 (63 FR 39096), ODE IV announced its plans for revising existing guidance documents and preparing new guidance documents on the development of antimicrobial drug products for the treatment of infections. ODE IV is reviewing, updating, consolidating, and revising its existing guidance documents and identifying topics for future guidance documents. In that notice, ODE IV explained its plan and requested public comment on topics for future guidance document development. The draft guidance documents are a part of ODE IV's guidance development plan.

The general draft guidance document being made available is entitled ''Developing Antimicrobial Drugs—General Considerations for Clinical Trials.'' The draft companion guidances are being made available on individual indications as follows:

- Uncomplicated urinary tract infections,
- Uncomplicated and complicated skin and skin structure infections,
- Community-acquired pneumonia,
- Nosocomial pneumonia,
- Acute bacterial exacerbation of chronic bronchitis,
- Secondary bacterial infection of acute bronchitis,
- Acute otitis media,
- Acute uncomplicated gonorrhea,
- Acute sinusitus,
- Complicated urinary tract infections and pyelonephritis,
- Bacterial prostatitis,
- Early Lyme disease,
- Empiric therapy of febrile neutropenia,
- Vulvovaginal candidiasis,
- Streptococcal pharyngitis and tonsillitis,
- Bacterial meningitis, and
- Bacterial vaginosis.

Additional guidances are under development.

The information in these draft guidance documents represents the agency's current thinking on developing antimicrobial drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

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

Dated: July 23, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–20239 Filed 7–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0448]

Guidance on the Performance Standard for Electrode Lead Wires and Patient Cables; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Guidance on the Performance Standard for Electrode Lead Wires and Patient Cables.'' The guidance document provides information on the electrocution hazard posed by unprotected patient electrical connectors. This guidance is intended to help affected parties understand the steps needed to achieve compliance with the performance standard for electrode lead wires and patient cables.

DATES: Written comments concerning this guidance must be received by October 27, 1998.

ADDRESSES: Submit written requests for single copies on a 3.5'' diskette of the guidance entitled ''Guidance on the Performance Standard for Electrode Lead Wires and Patient Cables'' to the Division of Small Manufacturers

Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the SUPPLEMENTARY INFORMATION section for information on electronic access to the guidance.

Submit written comments on this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Steward Crumpler, Center for Devices and Radiological Health (HFZ–340), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–4659.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled'' Guidance on the Performance Standard for Electrode Lead Wires and Patient Cables.'' This guidance document addresses the implementation of the Performance Standard for Electrode Lead Wires and Patient Cables. This standard was issued to address the electrocution hazard posed by unprotected patient electrical connectors. Since May 11, 1998, electrode lead wires or patient cables intended for use with any of the following devices have been required to comply with the standard:

1. Breathing frequency monitors,
2. Ventilatory effort monitors (Apnea detectors),
3. Electrocardiographs (ECG's),
4. Radio frequency physiological signal transmitters and receivers,
5. Cardiac monitors,
6. Electrocardiograph electrodes (including pre-wired ECG electrodes),
7. Patient transducer and electrode cables (including connectors),
8. Medical magnetic tape recorders (e.g. Holter monitors),
9. Arrhythmia detectors and alarms,
10. Telephone Electrocardiograph transmitters and receivers.

Manufacturers and users have an additional 2 years to prepare for the second phase of implementation of the standard. Beginning on May 9, 2000, any electrode lead wire or patient cable lead intended for use with any medical device must comply with the standard.

The performance standard incorporates the specific requirements of international standard, IEC–60601, clause 56.3(c), which requires leads to be constructed in such a manner as to preclude patient contact with hazardous voltages or, for certain devices, contact with electrical ground. Design changes and labeling changes need to be considered by manufacturers and importers of the devices referenced previously.

Adapters can be used to convert devices already in the marketplace so they can accept electrode wires and patient cables that comply with the new performance standard.

This guidance document represents the agency's current thinking on the performance standard for electrode lead wires and patient cables. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both. The agency has adopted good guidance practices (GGP's) (62 FR 8961, February 27, 1997), which set forth the agency's policy for the development, issuance and use of guidance documents. This is a Level 1 guidance document in accordance with the GGP's. The guidance document was made available on the World Wide Web (WWW) in March 1998 in order to provide guidance before the May 11, 1998, effective date of the first phase of implementation. Due to the risk of serious injury or death associated with the use of unprotected electrode leads and patient cables, this guidance is being implemented while the agency receives public input.

II. Comments

Interested persons may, on or before October 27, 1998, submit to the Dockets Management Branch (address above) written comments regarding this guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

In order to receive the ''Guidance on the Performance Standard for Electrode Lead Wires and Patient Cables'' via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1197) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the WWW. The Center for Devices and Radiological Health (CDRH) maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes the ''Guidance on the Performance Standard for Electrode Lead Wires and Patient Cables,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at ''http://ww.fda.gov/cdrh''.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

Dated: July 17, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–20240 Filed 7–28–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3009–N]

RIN 0938–AI99

Medicare Program; Peer Review Organization Contracts: Solicitation of Statements of Interest From In-State Organizations—Alaska, Delaware, the District of Columbia, Hawaii, Idaho, Illinois, Kentucky, Maine, Nebraska, Nevada, South Carolina, Vermont, and Wyoming

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with section 1153(i) of the Social Security Act, gives at least 6 months' advance notice of the expiration dates of contracts with out-of-State Utilization and Quality Control Peer Review Organizations. It also specifies the period of time in which in-State organizations may submit a statement of interest so that they may be eligible to compete for these contracts.

DATES: Written statements of interest must be received at the address specified no later than 5 p.m. EST, August 28, 1998. Due to staffing and resource limitations, we cannot accept statements submitted by facsimile (FAX) transmission.

ADDRESSES: Statements of interest must be submitted to the—Health Care Financing Administration, Acquisitions and Grants Groups, OICS, Attn.: Edward L. Hughes, 7500 Security Boulevard, Mail Stop C2–21–15, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Udo Nwachukwu, (410) 786–7234.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (title I, subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97–248) amended Part B of title XI of the Social Security Act (the Act) by establishing the Utilization and Quality Peer Review Organization (PRO) program.

PROs currently review certain health care services furnished under title XVIII of the Act (Medicare) and under certain other Federal programs to determine whether those services are reasonable, medically necessary, furnished in the appropriate setting, and are of a quality that meets professionally-recognized standards. PRO activities are a part of the Health Care Quality Improvement Program (HCQIP), a program which supports our mission to ensure health care security for our beneficiaries. The HCQIP rests on the belief that a plan's, provider's, or practitioner's own internal quality management system is key to good performance. The HCQIP is carried out locally by the PRO in each State. Under the HCQIP, PROs provide critical tools (for example, quality indicators and information) for plans, providers, and practitioners to improve the quality of care furnished to Medicare beneficiaries. The Congress created the PRO program in order to redirect, simplify, and enhance the cost-effectiveness and efficiency of the peer review process.

In June 1984, we began awarding contracts to PROs. We currently maintain 53 PRO contracts with organizations that provide medical review activities for the 50 United States, the District of Columbia, Puerto Rico, and the Virgin Islands. The organizations that are eligible to contract as PROs have satisfactorily demonstrated that they are either physician-sponsored or physician-access organizations in accordance with sections 1152 and 1153 of the Act and our regulations at 42 CFR 462.102 and 462.103. A physician-sponsored organization is one that is both composed of a substantial number of the licensed doctors of medicine or osteopathy practicing medicine or surgery in the respective review area and is representative of the physicians practicing in the review area. A physician-access organization is one that has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to ensure adequate peer review of the services furnished by the various medical specialties and subspecialties. In addition, the organization must not be a health care facility, health care facility association, or a health care facility affiliate, and must have a consumer representative on its governing board.

The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) amended section 1153 of the Act by adding new paragraph (i) that prohibits the Secretary from renewing the contract of any PRO that is not an in-State organization without first publishing in the **Federal Register** a notice announcing when the contract will expire. This notice must be published no later than 6 months before the date the contract expires and must specify the period of time during which an in-State organization may submit a proposal for the contract. If one or more qualified in-State organizations submit a proposal within the specified period of time, we may not automatically renew the contract on a noncompetitive basis, but must instead provide for competition for the contract in the same manner used for a new contract. An in-State organization is defined as an organization that has its primary place of business in the State in which review will be conducted (or, that is owned by a parent corporation, the headquarters of which is located in that State).

There are currently 13 PRO contracts with entities that do not meet the statutory definition of an in-State organization. The areas affected for purposes of this notice and their respective expiration dates are as follows:

Delaware—March 31, 1999
Illinois—March 31, 1999
Kentucky—March 31, 1999
Nevada—March 31, 1999
Vermont—March 31, 1999
Wyoming—March 31, 1999
Alaska—June 30, 1999
District of Columbia—June 30, 1999
Idaho—June 30, 1999
Maine—June 30, 1999
Hawaii—September 30, 1999
Nebraska—September 30, 1999
South Carolina—September 30, 1999

II. Provisions of the Notice

This notice announces the scheduled expiration dates of the current contracts between us and the out-of-State PROs responsible for review in the areas mentioned above.

Interested in-State organizations may submit statements of interest to be the PRO for these States. We must receive the statements no later than August 28, 1998, and, in its statement of interest, the organization must furnish materials that demonstrate that it meets the definition of an in-State organization. Specifically, the organization must have its primary place of business in the State in which review will be conducted or be a subsidiary of a parent corporation, whose headquarters is located in that State. In its statement, each interested organization must further demonstrate that it meets the following requirements:

A. Be Either a Physician-Sponsored or a Physician-Access Organization

1. Physician-Sponsored Organization

a. The organization must be composed of a substantial number of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, and be representative of the physicians practicing in the review area.

b. The organization must not be a health care facility, health care facility association, or health care facility affiliate.

c. In order to meet the substantial number requirement of A.1.a., an organization must be composed of at least 10 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area. In order to meet the representation requirement of A.1.a., an organization must state and have documentation in its files demonstrating that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area. Alternately, if the organization does not demonstrate that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, the organization must demonstrate in its statement of interest through letters of support from physicians or physician organizations, or through other means, that it is representative of the area physicians.

2. Physician-Access Organization

a. The organization must have available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to ensure adequate peer review of the services provided by the various medical specialties and subspecialties.

b. The organization must not be a health facility, health care facility association, or health care facility affiliate.

c. An organization meets the requirements of A.2.a. if it demonstrates that it has available to it at least one physician in every generally recognized specialty; and has an arrangement or arrangements with physicians under which the physicians would conduct review for the organization.

B. Have at Least one Individual who is a Representative of Consumers on its Governing Board

If one or more organizations meet the above requirements in a PRO area and submit statements of interest in accordance with this notice, we will consider those organizations to be potential sources for the 13 contracts upon their expiration. These organizations will be entitled to participate in a full and open competition for the PRO contract to provide medical review services.

III. Information Collection Requirements

This notice contains information collection requirements that have been approved by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned OMB Control Number 0938–0526.

Authority: Section 1153 of the Social Security Act (42 U.S.C. 1320c–2).

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

Dated: June 1, 1998.

Nancy-Ann Min Deparle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–20253 Filed 7–28–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development, Special Emphasis Panel Health Services Research and Intervention in Safe Motherhood in Rural Balochistan, Pakistan.

Date: August 11, 1998.

Time: 12:00 PM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852.

Contact Person: Hameed Khan, PHD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children; 93.864, Population Research; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS).

Dated: July 22, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–20273 Filed 7–28–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development, Special Emphasis Panel, The Effects of Swimming Lessons on the Risk of Drowning Among Children Ages 1–5 Years.

Date: August 24, 1998.

Time: 1:00 PM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd., Room 5E01 Rockville, MD 20852.

Contact Person: Hameed Khan, PHD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929. Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 22, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–20274 Filed 7–28–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–7 (O4).

Date: August 24–25, 1998.

Time: August 24, 1998, 7:30 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: Lakshmanan Sankaran, PHD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

(Catalogue of Federal Domestic Assistance Program Nos. 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research; 93.847, Diabetes, Endocrinology and Metabolic Research, National Institutes of Health, HHS)

Dated: July 22, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–20275 Filed 7–28–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Heath

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: August 17, 1998.

Time: 11:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 400C, Bethesda, MD 20852, (Telephone Conference Call).

Contact person: George M. Barnas, Phd, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities/NIDCD, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 22, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–20276 Filed 7–28–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel RFP, NIDR–4–98–1, 98–60.

Date: August 3, 1998.

Time: 2:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PHD, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 98–37, P01 Review.

Date: August 5–6, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, SEP–98–47, R–13 Review.

Date: August 12, 1998.

Time: 12:01 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PHD, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, SEP–98–57, R44 Review.

Date: August 27, 1998.

Time: 1:00 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, SEP–98–58, R44 Review.

Date: September 3, 1998.

Time: 1:00 PM to 3:30 PM.

Agenda: T review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, SEP, 98–46, P01 Review.

Date: September 21–22, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: to review and evaluate grant applications and/or proposals.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center Bethesda, MD 20814.

Contact Person: H. George Hausch, PHD, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, RM. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (310) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: July 22, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, HIH.

[FR Doc. 98–20277 Filed 2–28–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program: Phase Two—New—The national evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program will collect data on child mental health outcomes, family life, and service system development and performance. Data will be collected on roughly 5487 children and families, and 25 service systems (21 funded systems of care and 4 comparison systems). Child and family outcomes of interest include the following: child symptomatology and functioning, family functioning, material resources, and caregiver strain. Delivery system variables of interest include the following: maturity of system of care development, adherence to system of care principles, coordination and linkages among agencies, and intervention fidelity.

Data collection for this evaluation will be conducted over a five year period. The amount of time that families will participate in the study ranges from 18 to 36 months depending on when they enter the evaluation. The core of service system data will be collected annually for all five years, with a provider survey conducted in selected years. The total annual burden is estimated below.

Respondent	Number of respondents	Number of responses/respondent	Average burden/response (hours)	Total annual burden
Caregiver	5487	1.0913	2.4381	14,599
Youth	3292	1.1211	.9135	3372
Provider/Administrator	812	.9253	.6484	487
Total	9591			18,458

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 23, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–20218 Filed 7–28–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Evaluation of the HHS Access to Community Care and Effective Services and Supports (ACCESS) Program—0930–0164—Revision—The Center for Mental Health Services (CMHS) is seeking OMB approval to expand this evaluation study that is assessing service systems integration (SI) approaches for homeless persons with severe mental illnesses. The expansion is for conduct of 18 month follow-up interviews on the fourth cohort of homeless clients, a fourth wave of interviews with providers of services to homeless persons, and state and local level implementation data from the project staff. SI sites will be contrasted with comparison sites to assess the long-term impact of SI. Case studies will describe approaches to SI, processes by which SI takes place and factors that influence SI. The table below summarizes the annualized burden for this project.

	No. of Respondents (4th cohort)	No. of Responses per Respondent	Average Burden per Response	Total Burden (Annualized)
Currently approved				6,169
Clients (Homeless Persons)	1260	.57	.75	540
Service Providers	880	.57	1.2	603
Project Staff	27	50	.58	777
Total				8,089

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 23, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–20219 Filed 7–28–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in August 1998.

A summary of the meeting and a roster of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–7390.

Substantive program information may be obtained from the individual named as Contact for the meetings listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: August 3–4, 1998.

Place: Hyatt Regency At Crystal City 2799 Jefferson Davis Highway Arlington, VA 22202.

Closed: August 3, 1998 9:00 a.m.—5:00 p.m.; August 4, 1998 9:00 a.m.—adjournment

Panel: Center for Substance Abuse Treatment Cooperative Agreements for the Replication of Effective Treatment for Methamphetamine Dependence and Improvement of Cost-Effectiveness of Treatment TI 98–002.

Contact: C. Danielle Johnson, Room 17–89, Parklawn Building, Telephone: 301–443–2683 and FAX: 301–443–3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: July 23, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health, Services Administration (SAMHSA).

[FR Doc. 98–20242 Filed 7–28–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meetings of the SAMHSA Special Emphasis Panel I in August 1998.

A summary of the meetings and rosters of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–7390.

Substantive program information may be obtained from the individuals named as Contacts for the meetings listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: August 10–12, 1998.

Place: Hytt Regency at Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia 22202.

Closed: August 10–11, 1998 9:00 a.m.—5:00 p.m.; August 12, 1998 9:00 a.m.—adjournment.

Panel: Center for Substance Abuse Treatment Cooperative Agreements for Addiction Technology Transfer Centers TI 98–009.

Contact: Sarah Silverman, Room 17–89, Parklawn Building, Telephone: 301–443–6092 and FAX: 301–443–3437.

Committee: Special Emphasis Panel I (SEP I).

Meeting Dates: August 24–27, 1998.

Place: Hyatt Regency at Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia 22202.

Closed: August 24–26, 1998 9:00 a.m. to 5:00 p.m., August 27, 1998 9:00 a.m. to adjournment.

Panel: Center for Substance Abuse Treatment Cooperative Agreements for State Treatment Outcomes and Performance Pilot Studies Enhancement (TOPPS II) TI 98–005.

Contact: Michael Koscinski, Room 17–89, Parklawn Building, Telephone: 301–443–6094; FAX: 301–443–3437.

Committee: Special Emphasis Panel I (SEP I).

Meeting Dates: August 24–28, 1998.

Place: Hyatt Regency at Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia 22202.

Closed: August 24–27, 1998 8:30 a.m. to 5:00 p.m.; August 28, 1998 8:30 a.m. to adjournment.

Panel Title: Center for Substance Abuse Treatment Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need TI 98–006 (four panels)

Contacts: Raquel Crider, Ph.D., Telephone: 301–443–5063; Margaret Thompson, Telephone: 301–443–9912; Marco Montoya, Ph.D., Telephone: 301–443–7249; and Maggie Wilmore, Telephone: 301–443–8216—Room 17–89, Parklawn Building, FAX: 301–443–3437.

Committee: Special Emphasis Panel I (SEP I).

Meeting Dates: August 27–28, 1998.

Place: Hyatt Regency at Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia 22202.

Closed: August 27, 1998 8:30 a.m. to 5:00 p.m.; August 28, 1998 8:30 a.m. to adjournment.

Panel: Center for Mental Health Services Housing Initiative: Phase II SM 98–015.

Contact: Arthur Leabman, Room 17–89, Parklawn Building, Telephone: 301–443–4266, FAX: 301–443–3437.

Dated: July 23, 1998.

Jeri Lipov,

Committee Management Officer Substance Abuse and Mental Health Services Administration (SAMHSA).

[FR Doc. 98–20243 Filed 7–28–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4369–N–07]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: August 6, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to a Notice of Funding Availability (NOFA) for the HUD Colonies Initiative. This emergency processing is essential to secure the funding appropriated October 27, 1997. Pending action by Congress may result in the loss of Fiscal Year 1998 funds appropriated to HUD that have not been obligated by September 30, 1998.

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65, approved October 27, 1997) (FY 1998 HUD Appropriations Act) allocated $25,000,000 to test comprehensive approaches to developing a job base through economic development, developing affordable low- and moderate-income rental and homeownership housing, and increasing the investment of both private and nonprofit capital in rural and tribal areas of the US. Of that amount, $5 million has been targeted for the HUD Colonias NOFA to address housing and other development needs of colonia residents in the four border states where colonias are found (California, Arizona, New Mexico, and Texas). Of the $5 million, $1 million may be provided to one or more private or nonprofit intermediary organization(s) that would provide capacity-building loans, grants, or technical assistance to local nonprofit organizations serving colonia residents. The $4 million may be used by organizations serving colonias to provide decent, safe, sanitary, and accessible affordable housing as well as to address related development needs. Examples of likely activities are: new housing construction, self-help construction training, homeownership assistance, installation of water wells or septic systems, refinancing of debt to convert contracts-for-deed, surveying or replatting of existing subdivisions, and other related activities to support housing development.

Eligible applicants are organizations (for profit and nonprofit) providing assistance to and for residents of colonias in any of the four colonia States.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35):

Title of Proposal: NOF: HUD Colonias Initiative.

OMB Control Number, if applicable:

Description of the need for the information and proposed use: The information collection is essential so that HUD staff may determine the eligibility, qualifications and capability of applicants to carry out the HUD Colonias Initiative activities. HUD will review the information provided by the applicants against the selection criteria contained in the NOFA in order to rate and rank the applications and select the best and most qualified applications for funding. The selection criteria are: (1) Capacity of the Applicant and Relevant Organizational Staff; (2) Need/Extent of the Problem; (3) Soundness of Approach; and (4) Financial Feasibility/Leverage Resources.

Agency form numbers, if applicable: SF–424 (including a maximum 25 page application in response to the Factors for Award).

Members of affected public: Eligible applicants are organizations (for profit and nonprofit) providing assistance to and for residents of colonias in any of the four colonia States.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of applicants is 25, with approximately 8 recipients. The proposed frequency of the response to the collection of information is one-time; the application need be submitted only one time. Preparation time of 80 hours per application is estimated for a total of 2000 hours. Annual recordkeeping (including electronic) payments) is estimated at 2016 hours for 8 grant recipients.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 22, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 98–20232 Filed 7–28–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6310–01; GP8–0257; Form OR–2812–6; OMB Approval Number 1004–0168]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: John Styduhar, BLM, Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–952–6454.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). On May 1, 1998, BLM published a notice in the **Federal Register** (63 FR No. 84) requesting comment on this proposed collection. The comment period ended on June 30, 1998. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0168), Office of Information and Regulatory Affairs, Washington, D.C. 20503, telephone (202) 395–7340. Please provide a copy of Affairs, Washington, D.C. 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW., Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Report of Road Use. OMB approval number: 1004–0168.

Abstract: the BLM is proposing to renew the approval of an information collection under the existing regulations in 43 CFR 2812. That rule sets forth the requirements for logging road right-of-way permits issued by the BLM over the Oregon and California (O. and C.) and Coos Bay Revested Lands in western Oregon. The information collection will allow BLM to determine road use and maintenance fees and verify other information relevant to operations under the right-of-way permit.

Bureau Form Number: OR 2812–6.

Frequency: Quarterly.

Description of Respondents: Respondents include individuals, partnerships, and corporations engaged in the removal and transportation of timber over roads and rights-of-way authorized for use by BLM under an O. and C. logging road right-of-way permit.

Estimated Completion Time: 1 hour per response.

Annual Responses: 400.

Annual Burden Hours: 1600.

Collection Clearance Officer: Carole Smith, 202–452–0367.

Dated: July 10, 1998.

Carole J. Smith,

Bureau of Land Management, Information Clearance Officer.

[FR Doc. 98–20183 Filed 7–28–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy and consistent with 28 C.F.R. 50.7 and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on July 13, 1998, a proposed Consent Decree in *United States* v. *White Consolidated Industries, Inc. and the Town of Franklin, Wisconsin*., Civil Action No. 96–C–458, was lodged with the United States District Court for the Eastern District of Wisconsin. This consent decree represents a settlement of claims brought by the United States, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, against White Consolidated Industries and the Town of Franklin, Wisconsin for reimbursement of response costs incurred at the Lemberger Flyash Superfund Site (''Site'') located in Manitowac County, Wisconsin.

Under this settlement with the United States, White Consolidated Industries, Inc. will pay $600,000 and the Town of Franklin, Wisconsin will pay $120,000 in reimbursement of response costs incurred by the United States at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *White Consolidated Industries, Inc. and the Town of Franklin, Wisconsin,* D.J. Ref. 90–11–2–712C.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Wisconsin, 330 Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wisconsin, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $5.00 (.25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–20260 Filed 7–28–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Preliminary Approval of Settlement Agreement

In accordance with 28 CFR 50.7(b), notice is hereby given that a proposed

Settlement Agreement in *Sarah Yules* v. *United States of America*, Civil Action No. 95–10256–WGY (D. Mass.), was preliminarily approved by the United States District Court for the District of Massachusetts on June 19, 1998. Final approval of the proposed Settlement Agreement is subject to the requirements of 28 CFR 50.7.

In this case, Plaintiffs Sarah Yules and Sandra Faxon, acting for themselves and on behalf of proposed class of persons in the Town of Mashpee, Massachusetts, whose drinking water supplies had been contaminated or threatened by pollutants allegedly emanating from the Massachusetts Military Reservation, Barnstable County, Massachusetts (''MMR''), filed suit in 1995 against, among others, the United States Department of Defense and the United States National Guard Bureau (''the federal defendants''). The suit asserted claims under the Comprehensive Environmental Response, Compensation, and Liability Act, the Resource Recovery and Conservation Act, the Federal Clean Water Act, the Federal Tort Claims Act, and state law. Plaintiffs sought, among other things, an injunction requiring the federal defendants to abate any endangerment caused by the alleged discharge of pollutants from the MMR by connecting class members to the public water supply.

The United States and Plaintiffs have now reached agreement on the terms of a settlement of the claims in this case. The Department of Justice will receive written comments on the proposed Settlement Agreement for a period of 30 days from the date of publication of this notice. Comments should be addressed to Joshua E. Swift, U.S. Department of Justice, Environment & Natural Resources Division, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026, and refer to *Sarah Yules* v. *United States of America*, Civil Action No. 95–10246–WGY (D. Mass.), DJ# 90–11–3–1506.

The Settlement Agreement may be examined at the Clerk's Office, United States District Court for the District of Massachusetts, 90 Devonshire Street, Room 607, Boston, Massachusetts (617–223–9152), or at the offices of Plaintiffs' counsel, Shapiro, Haber & Urmy, 75 State Street, Boston, Massachusetts (617–439–3939).

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environmental & Natural Resources Division.

[FR Doc. 98–20259 Filed 7–28–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Extension of a currently approved collection; Controlled Substances Import/Export Declaration—DEA Form 236.

This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until September 28, 1998. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information.

Your comments 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/component, including whether the information will have practical utility;
2. evaluate the accuracy of the agencies/components 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. minimum the burden of the collection of information on those who are respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms information technology, e.g., permitting electronic submission of responses.

If you have comments, suggestions, or need copy of the proposed information collection instrument with instructions, if applicable, or additional information, please contact Patricia Good, 202–307–7297, Chief, Policy and Liaison Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Overview of this Information

(1) Type of information collection: Extension of a currently approved collection.

(2) The title of form/collection: Controlled Substances Import/Export Declaration—DEA Form 236.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form No.: DEA Form 236.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: None.

Abstract: DEA–236 provide the DEA with control measures over the importation and exportation of controlled substances as required by both domestic and international drug control laws. Affected public consists of businesses or other for profit organizations.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: 230 respondents. 12 responses per year × 15 minutes per response = 3 hrs.

(6) An estimate of the total burden (in hours) associated with the collection: 690 annual burden hours. 230 respondents × 3 hrs. per respondent per year.

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.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–20233 Filed 7–28–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 13, 1998, American Radiolabeled Chemicals, Inc., 11624 Bowling Green Drive, St. Louis, Missouri 63146, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below.

Drug	Schedule
Dimethyltryptamine (7435)	I
Dihydromorphine (9145)	I
Cocaine (9041)	II
Morphine (9300)	II

The firm plans to bulk manufacture small quantities of the listed controlled substances as radiolabeled compounds.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Admistration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 28, 1998.

Dated: July 16, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–20175 Filed 7–28–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Registration

By Notice dated January 27, 998, and published in the **Federal Register** on February 14, 1998, (63 FR 18227), Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059 made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk of manufacturer of the basic classes of controlled substances listed below

Drug	Schedule
2,5-Dimethoxyamphatamine (7396).	I
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II

The firm plans to manufacture amphetamine for distribution of the bulk active substances to its customers, 4-methoxyamphetamine as an intermediate in the manufacture of a non-controlled substance, methylphenidate for product research and development and 2,5-dimethoxyamphetamine to develop, manufacture and sell compounds to pharmaceutical and agrochemical industries.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Celgene Corporation to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 13, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–20177 Filed 7–28–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated April 3, 1998, and published in the **Federal Register** on April 14, 1998, (63 FR 18227), Lilly del Caribe, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaguez, Puerto Rico 00680, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of dextropropoxyphene (9273), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture bulk product for distribution to its customers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Lilly del Caribe, Inc. to manufacture dextropropoxyphene is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: July 13, 1998.

John H. King.

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–20178 Filed 7–28–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated May 6, 1998, and published in the **Federal Register** on May 19, 1998, (63 FR 27588), Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm is importing the phenylacetone to manufacture dextroamphetamine sulfate.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Lonza Riverside to import phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: July 14, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–20176 Filed 7–28–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 12, 1998, Novartis Pharmaceuticals Corp., Regulatory Compliance, 556 Morris Avenue, Summit, New Jersey 07901, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance methylphenidate (1724).

The firm plans to manufacture finished product for distribution to its customers

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registered.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administor, Office of Diversion Control, Drug Enforcement

Administration United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 28, 1998.

Dated: July 16, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–20174 Filed 7–28–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Certification by Designated School Official.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 28, 1998.

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:* Extension of a currently approved collection.

(2) *Type of the Form/Collection:* Certification by Designated School Official.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–538, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to collect information from non-immigrant students applying for an extension for the length of time of their legal status in the United States as a non-immigrant student while transferring from one school to another and permission to accept or continue employment.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 165,000 responses at 4 Minutes (.066) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,890 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 and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: July 23, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–20192 Filed 7–28–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Immigration Petition by Alien Entrepreneur.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 28, 1998.

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 of or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Immigrant Petition by Alien Entrepreneur.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–526. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used to petition for classification as an alien

entrepreneur as provided by sections 121(b)(5) and 162(b) of the Immigration Act of 1990 and section 203(b)(5) of the Immigration and Nationality Act. The information collected on this form will be used by the service to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 responses at 1.25 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,500 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 and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

In addition information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: July 23, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–20193 Filed 7–28–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Request to Enforce Affidavit of Financial Support and Intent to Petition for Custody for Public Law 97–359.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ‘‘sixty days’’ until September 28, 1998.

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:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Request to Enforce Affidavit of Financial Support and Intent to Petition for Custody for Public Law 97–359.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–363. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used to determine whether an Affidavit of Financial Support and Intent to Petition for Legal Custody requires enforcement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 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 and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: July 23, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–20194 Filed 7–28–98; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–100]

National Environmental Policy Act; New Millennium Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Finding of no significant impact.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA has made a finding of no significant impact (FONSI) with respect to the proposed New Millennium Program (NMP) and individual missions (as defined and described in the associated Programmatic Environmental Assessment (PEA)), which would involve a series of Earth orbiting and deep space spacecraft to be launched over the time period of 1998 through 2010 from Vandenberg Air Force Base (VAFB), California, and Cape Canaveral Air Station (CCAS), Florida.

DATES: Comments on the FONSI must be provided in writing to NASA on or before August 28, 1998.

ADDRESSES: Written comments should be addressed to Dr. William L. Piotrowski, Senior Program Executive, Mission & Payload Development Division, Code SD, NASA Headquarters, Washington, DC 20546–0001. The PEA prepared for the New Millennium Program which supports this FONSI may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street, SW, Washington, DC 20546 (202–358–0167).

(b) Vandenberg Air Force Base, Technical Library, Building 7015, 806 13th Street, Vandenberg AFB, CA 93437.

(c) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

(d) Spaceport USA, Room 2001, John F. Kennedy Space Center, Florida, 32899. Please call Lisa Fowler beforehand at 407–867-2497 so that arrangements can be made.

The PEA may also be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(e) NASA, Ames Research Center, Moffett Field, CA 94035 (650-604–4191).

(f) NASA, Dryden Flight Research Center, Edwards, CA 93523 (805–258–2663).

(g) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–0730).

(h) NASA, Johnson Space Center, Houston, TX 77058 (281–483-8612).

(i) NASA, Langley Research Center, Hampton, VA 23665 (757–864-2497).

(j) NASA, Lewis Research Center, 21000 Brookpark Rd, Cleveland, OH 44135 (216–433–2755).

(k) NASA, Marshall Space Flight Center, Huntsville, AL 35812 (256–544–5549).

(l) NASA, Stennis Space Center, MS 39529 (228–688–2164).

A limited number of copies of the PEA are available by contacting Dr. William L. Piotrowski at the address or telephone number indicated herein.

FOR FURTHER INFORMATION CONTACT: Dr. William L. Piotrowski, 202–358–1544.

SUPPLEMENTARY INFORMATION: NASA has reviewed the PEA prepared for the NMP and has determined that it represents an accurate and adequate analysis of the scope and level of associated environmental impacts. The PEA is hereby incorporated by reference in this FONSI.

NASA is proposing to develop, build and launch a series of Earth orbiting and deep space spacecraft over the time period of 1998 through 2010 from VAFB, California and CCAS, Florida. NMP spacecraft would be designed to validate essential technologies and capabilities which contribute to reducing the cost of future space and Earth science missions. Within the primary objective of technology validation, as much science as possible would be conducted. The program focuses on advanced technologies (i.e., instrumentation and operations), which offer the potential to contribute significantly to reducing the cost of future space and Earth science missions while increasing their relative capability in achieving scientific objectives. The investment now in the NMP could begin to provide tangible benefits, especially in validating solar electric propulsion, before the year 2000. The reduction in size of spacecraft and the increase in capability that NMP is designed to foster could bring about future economic benefits for the U.S. Space Program.

Spacecraft final assembly, propellant loading, and checkout of payload systems would be performed in existing Payload Processing Facilities at VAFB and CCAS. The spacecraft would then be transported to an existing Space Launch Complex at VAFB or CCAS where it would be integrated with the launch vehicle. Due to varying payload weights and mission specific requirements, NMP spacecraft may require different launch vehicles. The launch vehicle selected as an environmental upper ''bounding case'' (i.e., maximum expected environmental impacts), is the Delta II 7925. The NMP Program would not increase launch rates at CCAS and VAFB above existing or previously approved levels.

In addition to developing and validating spacecraft, instrumentation, and operations technologies, NMP is planned to demonstrate new types of management and engineering techniques that reduce development, launch, and operations costs. Computer-aided design, and concurrent project engineering and design are being used to accelerate and enhance the design process to lead to rapid implementation. NMP flight-validated technologies may also find their way into the consumer market for use in such applications as autonomous rail transportation systems, new microsensors for automotive and biomedical technology, and high quality imagery and enhanced memory media for computer systems.

Alternatives to the proposed action that were considered included those that: (1) Utilize an alternate launch vehicle, or (2) cancel the NMP (the ''no action'' alternative). Of the launch vehicles evaluated, U.S. launch vehicles proposed for launch of NMP spacecraft (specifically the Delta II, Titan IIG, Athena, Taurus, and the Pegasus) are best suited for the NMP for the following reasons: (1) The alternative launch vehicles examined are approximately equal in their potential impacts to the environment, and these impacts are not individually or cumulatively significant; (2) proposed U.S. launch vehicles closely match NMP performance requirements and allow for variations in payload size and weight; and/or (3) selected launch vehicles cost the same or less than the examined alternatives and are similar in terms of reliability.

Maximum expected impacts to the human environment associated with the program are bounded by and arise almost entirely from the normal launch of the Delta II 7925. Air emissions from the exhaust produced by the solid propellant graphite epoxy motors and liquid first stage primarily include carbon monoxide, hydrochloric acid, aluminum oxide in soluble and insoluble forms, carbon dioxide, and deluge water mixed with propellant by-products. Air impacts would be short-term and not significant. Short-term water quality and noise impacts, as well as short-term effects on plants and animals would occur only in the vicinity of the launch complex. There would be no impact on threatened or endangered species or critical habitat, cultural resources, wetlands or floodplains. The NMP would follow the NASA guidelines regarding orbital debris and minimizing the risk of uncontrolled reentry into the Earth's atmosphere. Accident scenarios have also been addressed and indicate no potential for substantial impact to the human environment. None of the NMP missions covered under the NMP PEA will have radioactive materials aboard the spacecraft, except for the possibility of very small quantities on certain missions for instrumentation purposes. Consequently, no potential substantial adverse impacts from radioactive substances are anticipated. The PEA provides a set of questions that must be addressed in determining whether or not a proposed future NMP mission falls within the scope of the PEA and this FONSI. No other individual or cumulative impacts of environmental concern have been identified.

The level and scope of environmental impacts associated with the launch of NMP spacecraft are well within the envelope of impacts that have been addressed in previous FONSI's concerning other launch vehicles and spacecraft. NMP spacecraft would not increase launch rates nor utilize launch systems beyond the scope of approved programs at VAFB or CCAS. No NMP-specific processing or launch activities have been identified that would require new permits and/or mitigation measures beyond those currently in place or in coordination at VAFB and CCAS. No significant new circumstances or information relevant to environmental concerns associated with the launch vehicle have been identified which would affect the earlier findings. As specific spacecraft and missions are fully defined, they will be reviewed in light of the NMP PEA. If NASA determines that future payloads have the potential for substantially different environmental impacts, further NEPA reviews will be conducted and documented, as appropriate.

On the basis of the NMP PEA, NASA has determined that the environmental impacts associated with the NMP and the specified missions identified as within the scope of the PEA would not individually or cumulatively have a significant impact on the quality of the human environment. NASA will take no final action prior to the expiration of the 30-day comment period.

Wesley T. Huntress, Jr.,

Associate Administrator for Space Science.

Michael R. Luther,

Deputy Associate Administrator for Earth Science.

[FR Doc. 98–20265 Filed 7–28–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Space Planning for the National Archives and Records Administration; Public Meeting

The National Archives and Records Administration announces the following meetings:

—Tuesday, August 6, 1998, from 7 p.m.–9 p.m. at the National Archives and Records Administration, Northeast Region (New York City), 201 Varick Street, New York, NY 10014–4811. For further information call 781–647–8745 or e-mail diane.leblanc@waltham.nara.gov.

—Monday, August 10, 1998, from 5 p.m.–7 p.m. at the National Archives and Records Administration, Central Plains Region (Lee's Summit), 200 Space Center Drive, Lee's Summit, MO 64064. For further information call 816–926–6920 or e-mail john.allshouse4@kansascity.nara.gov.

—Wednesday, August 19, 1998, from 7:30 p.m.–9:30 p.m. at the Wilda Marston Theatre, Loussac Public Library, 3600 Denali Street, Anchorage, Alaska 99501–2145. For further information call 907–271–2443 or e-mail archives@alaska.nara.gov.

—Monday, August 17, 1998, from 4 p.m.–6 p.m., at the National Archives and Records Administration, National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100. For further information call 314–538–4005 or e-mail david.petree@stlouis.nara.gov.

This is a series of meetings at which NARA is seeking public input for a study of its space needs for the next 10 years. NARA representatives will explain the reasons for undertaking a space plan, its objectives, and the planning process, and will invite comments and answer questions. In addition to helping NARA with its planning, this meeting is part of a National Performance Review initiative called *Conversations With America: My Government Listens.* NARA urges everyone interested to attend.

Reservations are not required. The meeting will be open to the public.

Dated: July 23, 1998.

John W. Carlin,

Archivist of the United States.

[FR Doc. 98–20234 Filed 7–28–98; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL EDUCATION GOALS PANEL

Task Force on the Future of the Goals; Meeting

AGENCY: National Education Goals Panel.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the Task Force on the Future of the Goals. This notice also describes the functions of the National Education Goals Panel and the Task Force on the Future of the Goals.

DATE AND TIME: Saturday, August 1, 1998 from 9:00 a.m. to 11:30 a.m.

ADDRESSES: Milwaukee Hilton Hotel, 509 West Wisconsin Avenue, (Walker Room), Milwaukee, WI 53203.

FOR FURTHER INFORMATION CONTACT: Ken Nelson, Executive Director, 1255 22nd Street, NW, Suite 502, Washington, DC 20037. Telephone: (202) 724–0015.

SUMMARY: The National Education Goals Panel (NEGP) was established to monitor, measure and report state and national progress toward achieving the eight National Education Goals, and report to the states and the Nation on that progress. The authorizing legislation for the National Education Goals and the Goals Panel are expected to expire in 1999. At its February, 1998, meeting, the Panel decided to form a Task Force to make recommendations on the future of the Goals after the year 2000.

AGENDA ITEMS: The meeting of the Task Force on the Future of the Goals is open to the public. Agenda items will include: (1) A review of the charge to the Task Force; (2) Presentations by Governor Roy Romer, (D), Colorado and Chester E. Finn, of the Hudson Institute, on the History of why the Goals were established, expectation for the Goals and the Panel and Recommendations, possibilities for the future; (3) Staff Responses to Panel Requests; (4) a Panel discussion on the future of the Goals and next steps for the Panel; and (5) the Panel will receive a commissioned paper on Grading State Standards.

Dated: July 23, 1998.

Ken Nelson,

Executive Director, National Education Goals Panel.

[FR Doc. 98–20186 Filed 7–28–98; 8:45 am]

BILLING CODE 4010–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for a Study of Jazz Artists

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for a study of Jazz Artists in four cities. The cities will be chosen from among the following pairs: New York/Philadelphia, Detroit/Kansas City, Atlanta/New Orleans, San Francisco/Los Angeles. The issues to be considered will include venues for performance, distribution of work through recordings, education and training, and extent of participation in health insurance and retirement programs. Those interested in receiving the Solicitation should reference Program Solicitation PS 98–06 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 98–06 is scheduled for release approximately August 17, 1998 with proposals due on October 19, 1998.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania

Ave., NW, Washington, DC 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements and Contracts.

[FR Doc. 98–20184 Filed 7–28–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts Teleconference

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on August 21, from 2:00 to 4:00 p.m. in Room 527 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. This meeting will be held by teleconference.

This meeting will be open to the public. The topic for discussion will be applications submitted under the ArtsREACH Initiative. If, in the course of discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely seasonal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed section in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue NW, Washington, DC 20506, 202/682–5532, TTY-TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Yvonne Sabine, Director of Council Operations, National Endowment for the Arts, Washington, D.C. 20506, at 202/682–5533.

Dated: July 24, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 98–20264 Filed 7–28–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* August 3, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 430.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in American History I, submitted to the Division of Research and Education for projects at the May 1, 1998 deadline.

2. *Date:* August 3, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in American History II, submitted to the Division of Research and Education for projects at the May 1, 1998 deadline.

3. *Date:* August 4, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for University Teachers in Asian, African, and Near Eastern Studies, submitted to the Division of Research and Education for projects at the May 1, 1998 deadline.

4. *Date:* August 4, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Anthropology II, submitted to the Division of Research and Education for projects at the May 1, 1998 deadline.

5. *Date:* August 5, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for University Teachers in Political Science, International Affairs and Jurisprudence, submitted to the Division of Research and Education for projects at the May 1, 1998 deadline.

6. *Date:* August 5, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Political Science, International Affairs and Jurisprudence, submitted to the Division of Research and Education for projects at the May 1, 1998 deadline.

7. *Date:* August 6, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for University Teachers in American History and Studies, submitted to the Division of Research and Education for projects at the May 1, 1998 deadline.

8. *Date:* August 6, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for University Teachers in Music, Dance, Theater, and Media, submitted to the Division of Research and Education for projects at the May 1, 1998 deadline.

9. *Date:* August 7, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Languages and Literature II, submitted to the Division of Research and Education for projects at the May 1, 1998 deadline.

10. *Date:* August 7, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Languages and Literature I, submitted to the Division of Research and Education for projects at the May 1, 1998 deadline.
11. *Date:* August 10, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Philosophy, submitted to the Division of Research and Education for projects at the May 1, 1998 deadline.
12. *Date:* August 10, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in American Literature, submitted to the Division of Research and Education for projects at the May 1, 1998 deadline.
13. *Date:* August 11, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in American Studies, Rhetoric, Communication, and Media, submitted to the Division of Research and Education for projects at the May 1, 1998 deadline.
14. *Date:* August 11, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for University Teachers in Modern European Languages, Literature, and Criticism, submitted to the Division of Research and Education for projects at the May 1, 1998 deadline.
15. *Date:* August 12, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Classical and Medieval Studies, submitted to the Division of Research and Education for projects at the May 1, 1998 deadline.
16. *Date:* August 12, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for University Teachers in Ancient, Classical, Medieval, and Renaissance Studies, submitted to the Division of Research and Education for the May 1, 1998 deadline.
17. *Date:* August 13, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for University Teachers in Art and Architectural History, submitted to the Division of Research and Education for the May 1, 1998 deadline.
18. *Date:* August 17, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for University Teachers in American Literature, Linguistics, and Literary Criticism, submitted to the Division of Research and Education for the May 1, 1998 deadline.
19. *Date:* August 19, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships for University Teachers in British Literature, submitted to the Division of Research and Education for the May 1, 1998 deadline.
20. *Date:* August 19, 1998.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for University Teachers and Independent Scholars in British Literature, submitted to the Division of Research and Education for the May 1, 1998 deadline.

Nancy E. Weiss,
Advisory Committee Management Officer.
[FR Doc. 98–20263 Filed 7–28–98; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Vermont Yankee Nuclear Power Corporation (the licensee) to withdraw its February 5, 1996, application for proposed amendment to Facility Operating License No. DPR–28 for the Vermont Yankee Nuclear Power Station, located in Vernon Vermont.

The proposed amendment would have revised the technical specifications to correct typographical errors, textual inconsistencies, minor errors, and add other enhancements. In addition, equipment identification numbers would be added to the tables.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 13, 1996, (61 FR 10398). However, by letter dated July 14, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 5, 1996, and the licensee's letter dated July 14, 1998, which withdrew the application for license amendment. The above documents 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 located at the Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Dated at Rockville, Maryland, this 23rd day of July 1998.

For the Nuclear Regulatory Commission.

Richard P. Croteau,
Project Manager, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.
[FR Doc. 98–20236 Filed 7–28–98; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298]

Nebraska Public Power District; Cooper Nuclear Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to Facility Operating License No. DPR–46 that was issued to Nebraska Public Power District (the licensee) for operation of the Cooper Nuclear Station (CNS), located in Nemaha County, Nebraska.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will revise the existing, or current, Technical Specifications (CTS) for the CNS in their entirety based on the guidance provided in NUREG–1433, ''Standard Technical Specifications, General Electric Plants, BWR/4,'' Revision 1, dated April 1995, and in the Commission's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (58 FR 39132). The proposed amendment is in accordance with the licensee's amendment request dated March 27, 1997, as supplemented by the letters dated September 29 and December 22, 1997, and February 9, March 13, March 26, April 16, and May 6, 1998.

The Need for the Proposed Action

It has been recognized that nuclear safety in all nuclear power plants would benefit from an improvement and standardization of plant Technical Specifications (TS). The ''NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Plants,''(52 FR 3788) contained proposed criteria for defining the scope of TS. Later, the Commission's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (58 FR 39132), incorporated lessons learned since publication of the interim policy statement and formed the basis for revisions to 10 CFR 50.36, TS. ''The Final Rule'' (60 FR 36953) codified criteria for determining the content of TS. To facilitate the development of standard TS for nuclear power reactors, each power reactor vendor owners' group (OG) and the NRC staff developed standard TS. For the CNS, the Improved Standard Technical Specifications (ISTS) are in NUREG–1433. This document formed the basis for the CNS Improved Technical Specifications (ITS) conversion. The NRC Committee to review Generic Requirements (CRGR) reviewed the ISTS, made note of its safety merits, and indicated its support of the conversion by operating plants to the ISTS.

Description of the Proposed Change

The proposed changes to the CTS are based on NUREG–1433 and on guidance provided by the Commission in its Final Policy Statement. The objective of the changes is to completely rewrite, reformat, and streamline the CTS (i.e., to convert the CTS to the ITS). Emphasis is placed on human factors principles to improve clarity and understanding of the TS. The Bases section of the TS has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1433, portions of the CTS were also used as the basis for the development of the CNS ITS. Plant-specific issues (e.g., unique design features, requirements, and operating practices) were discussed with the licensee, and generic matters with General Electric and other OGs.

The proposed changes can be grouped into the following four categories: relocated requirements, administrative changes, less restrictive changes involving deletion of requirements, and more restrictive changes. These categories are as follows:

1. Relocated requirements (i.e., LR or R changes) are items which are in the CTS, but do not meet the criteria set forth in the Final Policy Statement. The Final Policy Statement establishes a specific set of objective criteria for determining which regulatory requirements and operating restrictions should be included in the TS. Relocation of requirements to documents with an established control program, controlled by the regulations or the TS, allows the TS to be reserved only for those conditions or limitations upon reactor operation which are necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety, thereby focusing the scope of the TS. In general, the proposed relocation of items from the CTS to the Updated Safety Analysis Report (USAR), appropriate plant-specific programs, station procedures, or ITS Bases follows the guidance of NUREG–1433. Once these items have been relocated to other licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC-approved control mechanisms, which provide appropriate procedural means to control changes by the licensee.

2. Administrative changes (i.e., A changes) involve the reformatting and rewording of requirements, consistent with the style of the ISTS in NUREG–1433, to make the TS more readily understandable to station operators and other users. These changes are purely editorial in nature, or involve the movement or reformatting of requirements without affecting the technical content. Application of a standardized format and style will also help ensure consistency is achieved among specifications in the TS. During this reformatting and rewording process, no technical changes (either actual or interpretational) to the TS will be made unless they are identified and justified.

3. Less restrictive changes and the deletion of requirements involves portions of the CTS (i.e., L changes) which (1) provide information that is descriptive in nature regarding the equipment, systems, actions, or surveillances, (2) provide little or no safety benefit, and (3) place an unnecessary burden on the licensee. This information is proposed to be deleted from the CTS and, in some instances, moved to the proposed Bases, USAR, or procedures. The removal of descriptive information to the Bases of the TS, USAR, or procedures is permissible because these documents will be controlled through a process that utilizes 10 CFR 50.59 and other NRC-approved control mechanisms. The relaxations of requirements were the result of generic NRC actions or other analyses. They will be justified on a case-by-case basis for the CNS and described in the safety evaluation to be issued with the license amendment.

4. More restrictive requirements (i.e., M changes) are proposed to be implemented in some areas to impose more stringent requirements that are in the CTS. These more restrictive requirements are being imposed to be consistent with the ISTS. Such changes have been made after ensuring the previously evaluated safety analysis for the CNS was not affected. Also, other more restrictive technical changes have been made to achieve consistency, correct discrepancies, and remove ambiguities from the TS. Examples of more restrictive requirements include: placing a Limiting Condition for Operation (LCO) on station equipment which is not required by the CTS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

There are six other proposed changes to the CTS that may be included in the proposed amendment to convert the CTS to the ITS. These are beyond-scope changes in that they are changes to both the CTS and the ISTS. For the CNS, these are the following:

1. ITS LCO 3.1.8, Scram Discharge Volume (SDV) Vent and Drain Valves, revise the ISTS LCO 3.1.8 Action A to require that for vent and drain lines with one inoperable valve, the lines be isolated within 7 days, rather than restore the valves to operable status. (Change ITS 3.1.8–L.4)

2. CNS Setpoint Methodology, revise the setpoint and allowable values in the ITS Section 3.3 from the values in the CTS.

3. ITS 3.3.2.1, CTS Table 3.2.C, relocate the upscale trip level settings (or allowable values) for the rod block monitor upscale trips to the core operating limits report (Change ITS 3.3.2.1–RL.2)

4. ITS 3.3.3.2, CTS Tables 3.2.I–1 and 4.2.I, relocate the list of alternate shutdown instrumentation and the minimum number of channels for each instrument to the IST Bases (Change ITS 3.3.3.2–RL.1)

5. ITS 3.8.3, CTS 3.9.A, 1.5.b, increase the minimum volume of fuel oil in the diesel generator fuel oil storage tanks. (Change ITS 3.8.3–M.2)

6. ITS 5.5.9, CTS 4.9.A.2.d and e, diesel fuel oil testing program, addition of a new ASTM-approved test as an alternative to the clear and bright

appearance test in CTS 4.9.A.2.e.1.d) (Change ITS 5.5–M.4)

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed conversion of the CTS to the ITS for the CNS, including the six beyond-scope issues identified above. Changes which are administrative in nature have been found to have no effect on the technical content of the TS.

The increased clarity and understanding these changes bring to the TS are expected to improve the operators control of the CNS in normal and accident conditions.

Relocation of requirements from the CTS to other licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may then be made by the licensee under 10 CFR 50.59 and other NRC-approved control mechanisms which will ensure continued maintenance of adequate requirements. All such relocations have been found consistent with the guidelines of NUREG–1433 and the Commission's Final Policy Statement.

Changes involving more restrictive requirements have been found to enhance station safety.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit, or to place an unnecessary burden on the licensee, their removal from the TS is justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic action, or of agreements reached during discussions with the OG and found to be acceptable for the station. Generic relaxations contained in NUREG–1433 have been reviewed by the NRC staff and found to be acceptable.

In summary, the proposed revisions to the TS have been found to provide control of station operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

The proposed amendment will not increase the probability or consequences of accidents, will not change the quantity or types of any effluent that may be released offsite, and will not significantly increase occupational or public doses. Also, these changes do not affect the design of the station, do not involve any modifications to the station, and do not increase the licensed power and allowable effluents for the station. The changes will not create any new or unreviewed environmental impacts that were not considered in the Final Environmental Statement (FES) related to the operation of the CNS dated February 1973. Therefore, there are no significant radiological impacts associated with the proposed amendment.

With regard to potential non-radiological impacts, the proposed amendment involves features located entirely within the restricted area defined in 10 CFR Part 20. They do not affect non-radiological station effluents and have no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed amendment.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the proposed amendment would be to deny the amendment. Denial of the licensee's application would not reduce the environmental impacts of the CNS operations, but it would prevent the safety benefits to the station from the conversion to the ITS. 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 FES for the CNS.

Agencies and Persons Consulted

In accordance with its stated policy, on July 22, 1998, the staff consulted with the Nebraska State official, Cheryl Rogers of the State Department of Health, 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 the proposed action.

For further details with respect to the proposed action, see the licensee's application dated March 27, 1997, as supplemented by the letters dated September 29 and December 22, 1997, and February 9, March 13, March 26, April 16, and May 6, 1998, 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 Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, Nebraska 68305.

Dated at Rockville, Maryland, this 23rd day of July 1998.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Acting Director, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–20235 Filed 7–28–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Pub. L. 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 July 3, 1998, through July 17, 1998. The last biweekly notice was published on July 15, 1998 (63 FR 38198).

Notice of Consideration of Issuance of Amendments to Facility 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 Administration 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 August 14, 1998, 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.

Duke Energy Corporation (DEC), et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: May 27, 1997, as supplemented by letters dated March 9, March 20, April 20, May 27, and June 24, 1998

Description of amendment request: The proposed amendments would revise the current Technical Specifications (TS) of each unit to conform with NUREG–1431, Revision 1, ''Standard Technical Specifications—Westinghouse Plants.'' The staff had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on July 14, 1997 (62 FR 37628) covering all the proposed changes that were indeed within the scope of NUREG–1431. The staff subsequently published two Notices of Consideration of Issuance of Amendments and Proposed No Significant Hazards Determination (63 FR 25106, dated May 6, 1998; 63 FR 27760 dated May 20, 1998) to cover DEC's March 9, March 20, April 20, and May 27, 1998, supplements, which proposed changes that are beyond the scope of NUREG–1431. On June 24, 1998, DEC identified additional beyond-scope changes. The following descriptions and proposed no significant hazard analyses cover only those beyond-scope changes. Associated with each change are administrative/editorial changes such that the new or revised requirements would fit into the format of NUREG–1431.

1. Current TS 4.8.1.1.2.f specifies that the fuel for the emergency diesel generators (EDGs) be periodically sampled for particulate contamination strictly in accordance with the industry standard ASTM-D2276–78. DEC proposed to relax this requirement, adopting only the guidance of the standard, but using a larger particulate filter for sampling (change from 0.8-to 3-micron). The revised requirement would show up as TS 5.5.13.c of the Improved TS. No changes to the design and functions of the EDGs are proposed.

2. DEC proposed to revise current TS Table 4.3–1, Functions 16 and 17. The revised requirements, to show up as Table 3.3.1–1, Functions 15 and 16.b, of the Improved TS, would add an actuation logic test surveillance for the reactor trip system interlocks and the safety injection input from the engineered safety feature actuation system. No changes to the design and functions of these systems are involved.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), DEC has provided its analyses of the issue of no significant hazards consideration for each of the above proposed changes. The NRC staff has reviewed DEC's analyses against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below.

1. Will the changes involve a significant increase in the probability or consequences of an accident previously evaluated?

For all the changes the answer is ''no.'' The proposed changes will not affect the safety function of the subject systems. There will be no direct effect on the design or operation of any plant structures, systems, or components. No previously analyzed accidents were initiated by the functions of these systems, and the systems will continue to perform their functions in mitigating consequences of previously analyzed accidents. Therefore, the proposed changes will have no impact on the consequences or probabilities of any previously evaluated accidents.

2. Will the changes create the possibility of a new or different kind of accident from any accident previously evaluated?

For all the changes the answer is ''no.'' The proposed changes would not lead to any design or operating procedure change. Hence, no new equipment failure modes or accidents from those previously evaluated will be created.

3. Will the changes involve a significant reduction in a margin of safety?

For all the changes the answer is ''no.'' Margin of safety is associated with confidence in the design and operation of the plant. The proposed changes to the TS do not involve any change to plant design, operation, or analysis. Thus, the margin of safety previously analyzed and evaluated is maintained.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied for each of the proposed changes. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Project Director: Herbert N. Berkow.

Duke Energy Corporation (DEC), et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: September 15, 1997, as supplemented by letters dated March 5, April 27, and June 15, 1998.

Description of amendment request: The staff had previously published a Notice of Consideration of Amendments and Proposed No Significant Hazards Consideration Determination on the licensee's September 15, 1997, application in the **Federal Register** on October 8, 1997 (62 FR 52580). As a result of the staff's requests for additional information, DEC expanded its original amendment application by letter dated June 15, 1998. Specifically, the June 15, 1998, letter proposes requirements regarding the Low Temperature Overpressure Protection System to be added to the units' Technical Specifications. There is, however, no change to plant design.

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, addressing the three standards of 10 CFR 50.92(c):

First Standard

Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The Low Temperature Overpressure Protection System is not an accident initiating system; it is an accident mitigating system. Therefore, the addition of supplemental Technical Specification required controls pertaining to this system cannot impact accident initiating probabilities. The Low Temperature Overpressure Protection System will remain fully capable of performing its design accident mitigation function for the modes in which it is required. Therefore, no accident consequences will be impacted.

Second Standard

Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. As noted previously, the Low Temperature Overpressure Protection System is not an accident initiating system. The addition of the supplemental Technical Specification controls pertaining to this system as specified will not impact any plant systems that are accident initiators. No other modifications are being proposed to the plant which would result in the creation of new accident mechanisms.

Third Standard

Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of the fission product barriers will not be impacted by implementation of this proposed amendment supplement. The Low Temperature Overpressure Protection System will remain fully capable of performing its design function for the modes in which it is required. Therefore, no safety margin will be significantly impacted.

The staff reviewed the licensee's analysis, and agrees that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Project Director: Herbert N. Berkow.

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: May 8, 1998.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) for the Power Range Neutron Flux High Trip setpoints in the event of inoperable main steam safety valves. The licensee has determined that the new values are more conservative than the values in the current TS. Also, the proposed changes would delete the references to the 3-loop operation. The proposed changes are consistent with the proposed Improved Standard TS submitted by the licensee on May 27, 1997.

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. Will operation of the facility in accordance with the proposed amendment involve an increase in the probability or consequences of an accident previously evaluated?

The proposed amendment involves a reduction in the maximum allowable power range neutron flux high setpoints in case of inoperable main steam safety valves. All applicable UFSAR [Updated Final Safety Analysis Report] Chapter 15 transient acceptance criteria are met with the proposed change. Therefore, operation of the facility in accordance with the proposed amendment will not involve an increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated:

No new equipment or operating practice is involved with this proposed amendment. No alteration to any existing hardware is involved with this proposed amendment. Power Range high neutron flux setpoint calibration is continued to be performed by the same approved procedure. Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of any new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with the proposed amendment involve a reduction in a margin of safety?

The proposed change is in a more-conservative direction. All applicable UFSAR Chapter 15 transient acceptance criteria are met with the proposed amendment. Therefore, operation of the facility in accordance with the proposed amendment will 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: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Project Director: Herbert N. Berkow.

Duke Energy Corporation (DEC), et al., Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: May 27, 1997, as supplemented by letters dated March 9, March 20, April 20, May 27, June 3, June 24, and July 7, 1998.

Description of amendment request: The proposed amendments would revise the current Technical Specifications (TS) of each unit to conform with NUREG–1431, Revision 1, ''Standard Technical Specifications—Westinghouse Plants.'' The staff had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on July 15, 1997 (62 FR 37940) covering all the proposed changes that were indeed within the scope of NUREG–1431. The staff subsequently published additional Notices of Consideration of Issuance of Amendments and Proposed No Significant Hazards Determination on May 6, 1998 (63 FR 25107 and 63 FR 25108 (two notices)) and on May 20, 1998 (63 FR 27761) to cover DEC's March 9, March 20, April 20, and May 27, 1998, supplements, which proposed changes that are beyond the scope of NUREG–1431.

On June 24, 1998, DEC identified additional beyond-scope changes. The following descriptions and proposed no significant hazard analyses cover only those beyond-scope changes. Associated with each change are administrative/editorial changes such that the new or revised requirements would fit into the format of NUREG–1431.

1. Current TS 4.8.1.1.2.f specifies that the fuel for the emergency diesel generators (EDGs) be periodically sampled for particulate contamination in accordance with ASTM–D2276–78. DEC proposed to relax this requirement, adopting instead the guidance of ASTM–D2276, Method A. The revised requirement would show up as TS 5.5.13.c of the Improved TS. No changes to the design and functions of the EDGs are proposed.

2. DEC proposed to change the required action due to inoperable channels of the containment pressure control system as currently contained in Table 3.3–3, Item 7. The revised requirement would show up as Action Item 16b in Table 3.3.2–1 of the Improved TS. No changes to the design and functions of the containment pressure control system are involved.

3. DEC proposed to revise current TS Table 4.3–1, Functions 16 and 17. The revised requirements, to show up as Table 3.3.1–1 Functions 15 and 16.b, would add an actuation logic test surveillance for the reactor trip system interlocks and the safety injection input from the engineered safety feature actuation system. No changes to the design and functions of these systems are involved.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), DEC has provided its analyses of the issue of no significant hazards consideration for each of the above proposed changes. The NRC staff has reviewed DEC's analyses against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below.

1. Will the changes involve a significant increase in the probability or consequences of an accident previously evaluated?

For all the changes the answer is ''no.'' The proposed changes will not affect the safety function of the subject systems. There will be no direct effect on the design or operation of any plant structures, systems, or components. No previously analyzed accidents were initiated by the functions of these systems, and the systems will continue to perform their functions in mitigating consequences of previously analyzed accidents. Therefore, the proposed changes will have no impact on the consequences or probabilities of any previously evaluated accidents.

2. Will the changes create the possibility of a new or different kind of accident from any accident previously evaluated?

For all the changes the answer is ''no.'' The proposed changes would not lead to any hardware or operating procedure change. Hence, no new equipment failure modes or accidents from those previously evaluated will be created.

3. Will the changes involve a significant reduction in a margin of safety?

For all the changes the answer is ''no.'' Margin of safety is associated with confidence in the design and operation of the plant. The proposed changes to the TS do not involve any change to plant design, operation, or analysis. Thus, the margin of safety previously analyzed and evaluated is maintained.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied for each of the proposed changes. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Project Director: Herbert N. Berkow.

Duke Energy Corporation, Docket No. 50–287, Oconee Nuclear Station, Unit 3, Oconee County, South Carolina

Date of amendment request: July 16, 1998.

Description of amendment request: The proposed change would extend, on a one-time basis, certain specified Technical Specification surveillances that are required to be performed at a frequency of 18 months from the maximum allowed frequency of 22 months, 15 days, to a maximum of 24 months. The following surveillances are involved: (a) Standby Shutdown Facility (SSF) Reactor Coolant System (RCS) Pressure Instrument Calibration; (b) SSF RCS Pressurizer Level Instrument Calibration; (c) SSF RCS Makeup Pump Flow Instrument Calibration; (d) Reactor Protective System (RPS) RCS Flow Instrument Calibration; (e) RPS RCS Pressure Instrument Calibration; and (f) Low Pressure Injection System Pump Discharge Valves LP–17 and LP–18 Manual Cycle.

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:

This proposed change has been evaluated against the standards in 10 CFR 50.92 and has been determined to involve no significant hazards, in 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?

No. A review of the previous two instrument channel tests and calibrations, and two manual valve cycle tests discussed in this amendment request concluded that no adverse effects should occur as a result of the one-time extension.

There is a high level of confidence that the instruments and valves should be available to perform their intended function during the requested extension period. Thus, the probability and consequences of an accident previously evaluated will not be significantly increased.

(2) Create the possibility of a new or different kind of accident from the accidents previously evaluated?

No. Since the one-time extension should not cause any adverse effects on Standby Shutdown Facility, Reactor Protective System or the Low Pressure Injection system, a new or different kind of accident from the accidents which were previously evaluated will not occur. The Standby Shutdown Facility, Reactor Protective System or the Low Pressure Injection system should be available to perform their intended function during the requested extension period.

(3) Involve a significant reduction in a margin of safety?

No. The margin of safety will not be significantly reduced by this amendment request because the Standby Shutdown Facility, Reactor Protective System or the Low Pressure Injection system should be available to perform their intended function during the requested extension period. In addition, the review of the previous tests and calibrations which are discussed in the amendment request concluded that no adverse effects should occur as a result of the one-time extension.

Duke [Energy Corporation] has concluded, based on the above information, that there are no significant hazards involved in this amendment request.

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: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

NRC Project Director: Herbert N. Berkow.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: April 28, 1998.

Description of amendment request: The proposed amendment would change the scope and frequency of volumetric and surface inspections for the reactor coolant pump motor flywheels. The current prescribed frequency and scope are contained in U.S. NRC Regulatory Guide 1.14, Regulatory Positions C.4.b.1 and C.4.b.2. The proposed revision reflects the frequency and scope of volumetric and surface examinations, which has been reviewed and approved by the NRC, as stated in the Safety Evaluation for Topical Report WCAP–14535A.

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) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The CR–3 [Crystal River Unit 3] components addressed by this proposed change are the Reactor Coolant Pumps (RCPs), identified by plant tagging procedures as RCP–1A, RCP–1B, RCP–1C, and RCP–1D. The RCPs are vertical, single stage, single suction, shaft seal, centrifugal pumps. The RCPs ensure that adequate cooling water is circulated through the reactor coolant system. Following loss of power to the RCP motor, the flywheel, in conjunction with the impeller and motor rotating assembly, provide sufficient rotational inertia to assure adequate coolant flow during RCP coastdown, thus providing adequate core cooling. The maximum loading on the RCP motor flywheel results from overspeed following a large loss of coolant accident (LOCA). The estimated maximum speed in the event of a LOCA was established conservatively. The proposed change does not affect that analysis. Reduced coastdown times due to a single failed flywheel is bounded by the locked rotor analysis, therefore it will not place the plant in an unanalyzed condition.

Reducing the frequency of inspection, as proposed, will not significantly increase the probability of an accident previously evaluated. CR–3 is not specifically analyzed for a flywheel failure accident. The design, fabrication, and testing of the flywheels in accordance with the guidance found in Regulatory Guide 1.14 minimizes the potential for flywheel failure. Nevertheless, the topical report indicates that the flywheels could be operated for forty years without inspection, and there would be no significant increase in the probability of failure of the flywheel. However, inspections are proposed to continue at a frequency of once every ten years as a conservative measure. Therefore, these changes do not involve a significant 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.

The purpose of the RCP motor flywheel inspection is to identify flaws that could lead to failure of the flywheel. The design, fabrication, and testing of the flywheels in accordance with the guidance found in Regulatory Guide 1.14 minimizes the potential for flywheel failure. No new failure mode is introduced due to the change in flywheel inspection frequency since the proposed changes do not involve the addition or modification of equipment, nor alter the design or operation of affected plant systems, structures or components. Therefore, these changes do not create a possibility of a new or different kind of accident from any previously evaluated.

(3) Involve a significant reduction in a margin of safety.

As shown in the topical report, RCP motor flywheels have been inspected for twenty years without any service induced flaws being identified. Additionally, the analyses demonstrated that the flywheels are manufactured from excellent quality steel, have a high fracture toughness, and have a very high flaw tolerance. The topical report indicates that the flywheels could be operated for forty years without inspection, and there would be no significant increase in the probability of failure of the flywheels. However, inspections are proposed to continue at a frequency of once every ten years as a conservative measure. The non-destructive examination acceptance criteria is not changing as a result of the proposed LAR. Thus, the margin of safety is not reduced significantly by the proposed change in inspection frequency.

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 request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC—A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Project Director: Frederick J. Hebdon.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: May 27, 1998.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TS) to remove the requirement for safety injection tanks (SITs) to be operable in reactor operational Mode 4.

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) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve changes to previously evaluated accident initiators. The proposed TS changes related to removal of the requirement for safety injection tanks to be operable in MODE 4 do not impact the results of existing accident analyses, and have no adverse impact on any plant system performance.

The function of each SIT is to provide early reactor core reflood in the event of a LBLOCA [large break loss-of-coolant accident]. Safety injection tanks are not required for mitigating the consequences of large RCS pipe ruptures in MODE 4, and the proposed change to TS 3.5.1 will delete the requirement for SIT operability when in this mode. Due to the reduced initial stored energy and decay heat generation rate consistent with operation in the shutdown modes, the required operable HPSI [high-pressure safety injection] pump is sufficient to perform the function of reactor vessel reflood and coolant inventory make-up. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not change the physical plant or the modes of operation defined in the facility license. The changes do not involve the addition of new equipment or the modification of existing equipment, nor do they alter the design of St. Lucie plant systems described in the Updated Final Safety Analysis Report (UFSAR). There are no adverse effects on any system performance due to the proposed TS changes, and the plant configuration will continue to remain consistent with assumptions used in the existing accident analyses. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed TS changes have been evaluated with respect to the applicable safety analyses. FPL [Florida Power and Light Co.] determined from this new evaluation that safety injection tanks are not required to prevent core uncovery during a loss of coolant accident initiated in MODE 4. Due to the reduced core heat removal requirements in this lower mode and in the absence of substantial core uncovery, fuel cladding temperatures and clad oxidation will remain at low levels, long term cooling will be maintained, and 10 CFR 50.46 acceptance criteria will be satisfied. Therefore, operation of the facility in accordance with the proposed amendment would 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 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: Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981–5596.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Frederick J. Hebdon.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: June 29, 1998.

Description of amendment request: This Technical Specification change request replaces in its entirety, a previously submitted request dated February 22, 1996, and published in the **Federal Register** on March 27, 1996 (61 FR 13525). This request greatly reduces the scope of the previous request. It retains the provision to delete the requirement that the biennial inspection of the Emergency Diesel Generators (EDGs) be performed during shutdown, permits skipping diesel starting battery capacity test for recently installed batteries, and increases the minimum loading during diesel testing from 20% to 80%. In addition, there are wording changes to enhance clarity, and a typographical error is corrected.

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. State the basis for the determination that the proposed activity will or will not increase the probability of occurrence or the consequences of an accident.

The proposed activity deletes the requirement to inspect EDGs during shut down from the Technical Specifications and permits skipping diesel starting battery capacity tests of recently installed batteries. The minimum loading during the testing of the diesels has been increased from 20% to 80%. In addition, wording changes were made to enhance clarity and a minor typographical error was corrected. During reactor operations other power sources are available to compensate for one diesel being out of service. The inspections and testing will continue to be done with the same intervals and the 80% loading is a more stringent requirement. Therefore, these changes do not affect the design or performance of the EDGs or their ability to perform their design function.

2. State the basis for the determination that the activity does or does not create a possibility of an accident or malfunction of a different type than any previously identified in the [safety analysis report] SAR.

The EDGs are not the source of any accident described in the SAR. These changes do not modify the design or performance of the EDGs and do not affect plant functions or actions. Current specifications permit one diesel generator to be inoperable for up to 7 days and this change will not impact that time frame. Therefore, the proposed change does not create the possibility of an accident or malfunction of a different type than those previously identified.

3. State the basis for the determination that the margin of safety is not reduced.

The proposed changes are designed to improve EDG reliability and availability during shutdown periods by providing flexibility in the scheduling and performance of maintenance. The surveillance intervals are unchanged and operability requirements are not modified. The proposed activity does not alter the basis of any technical specification that is related to the establishment or maintenance of a nuclear safety margin. Therefore, the margin of safety is not significantly reduced by this action.

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: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cecil O. Thomas.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1 (NMP1), Oswego County, New York

Date of amendment request: June 19, 1998.

Description of amendment request: The proposed amendment would update Technical Specification (TS) 3.2.2, ''Minimum Reactor Vessel Temperature for Pressurization,'' and the associated TS Bases pages. TS 3.2.2 contains tables and figures that limit the minimum reactor vessel temperature for a given pressure. The limits are based upon the number of Effective Full Power Years (EFPY) of core operation. The current tables and figures are valid for up to 18 EFPYs of core operation. The proposed amendment will substitute new tables and figures that are valid for 20, 24 and 28 EFPYs. The word ''leakage'' would be added to clarify that this TS applies to both leakage and hydrostatic tests.

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. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes to the P–T [pressure and temperature] curves are being proposed to preclude brittle fracture of RPV [reactor pressure vessel] materials for up to 28 EFPYs. In addition to the leakage/hydrostatic test curve for 28 EFPYs, leakage/hydrostatic test curves have been prepared for exposures up to 20 EFPYs and up to 24 EFPYs to shorten outage time for startups conducted prior to these exposures. Safety margins specified in 10 CFR Part 50, Appendix G and Appendix G to Section III of the ASME [American Society of Mechanical Engineers] Code will continue to be met for each of these curves. Also, the proposed changes do not affect the probability of any accident precursors. Therefore, operation in accordance with the proposed change will not involve a significant increase in the probability of an accident previously evaluated.

The RPV, as part of the reactor coolant system, provides a barrier to the release of reactor coolant and subsequent radiological consequences. Operation in accordance with the proposed amendment will preclude brittle fracture of the RPV consistent with current requirements, and consequently, not affect the consequences of any accidents. Therefore, operation of NMP1 [Nine Mile Point Unit 1] in accordance with the proposed amendment will not involve a significant increase in the consequences of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any physical alterations to plant configurations or introduce any new accident precursors which could initiate a new or different kind of accident. The proposed change does not affect the intended function of the RPV nor does it affect the operation of the RPV in a way which would create a new or different kind of accident. The changes to the P–T curves are being proposed to preclude brittle fracture of RPV materials for up to 28 EFPYs. Safety margins specified in 10 CFR Part 50, Appendix G and Appendix G to Section III of the ASME Code will continue to be met. Therefore, operation of NMPI in accordance with the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The existing NMP1 P–T curves were developed using safety margins for brittle fracture found in 10 CFR PART 50 Appendix G and Appendix G to Section III of the ASME Code. The proposed NMP1 P–T operation curves, which are valid for up to 28 EFPYs of operation, were also developed using the safety margins for brittle fracture found in 10 CFR PART 50, Appendix G and Appendix G to Section III of the ASME Code. Accordingly, operation of NMPI in accordance with the revised P–T operating limits will continue to preclude brittle fracture of the RPV materials during plant heatup, cooldown, and leakage/hydrostatic test conditions with the same margin of safety that currently exists. Therefore, operation of NMP1 in accordance with the proposed amendment will 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 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: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: S. Singh Bajwa.

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 request: May 22, 1997, as supplemented by letters dated June 12, 1997, August 28, 1997 and January 29, 1998.

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 TS 3/4.7.3.1, ''Plant Systems—Vital Component Cooling Water System,'' to add new action statements and surveillance requirements for the component cooling water (CCW) surge tank pressurization system. CCW surge tank pressurization system requirements currently exist in an equipment control guideline, but are proposed for inclusion in TS because the CCW surge tank pressurization system is required to support licensing basis assumptions for a design basis loss-of-coolant accident.

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. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The component cooling water (CCW) surge tank pressurization system is designed to mitigate the consequences of an accident, and cannot initiate an accident.

The proposed changes to the Technical Specifications (TS) incorporate requirements for the CCW surge tank pressurization system to assure that the consequences of an accident are not increased. The CCW surge tank pressurization system was installed to restore the component cooling water system to its original design and licensing basis. The design of the CCW surge tank pressurization system ensures that a minimum pressure of 17 psig is maintained in the surge tank at the initiation of a design basis loss of coolant accident. This minimum pressure is sufficient to ensure that boiling will not occur in the containment fan cooler units (CFCUs), assuming the worst case accident conditions with a concurrent loss of offsite power (LOOP).

Therefore, the addition of these new requirements does 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 CCW surge tank pressurization system is designed to mitigate the consequences of an accident, and cannot initiate an accident.

The proposed TS changes incorporate requirements for the CCW surge tank pressurization system. Installation of the CCW surge tank pressurization system provides assurance that boiling in the CFCUs will not occur, assuming the worst case accident, with a concurrent LOOP.

Therefore, addition of these requirements does 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 to the TS incorporate requirements for the CCW surge tank pressurization system to assure that the consequences of an accident are not increased. The design of the CCW surge tank pressurization system ensures that a minimum pressure of 17 psig is maintained in the surge tank at the initiation of a design basis accident. The minimum pressure is sufficient to ensure that boiling will not occur in the CFCUs, assuming the worst case accident conditions with a concurrent LOOP.

Therefore, the proposed changes do 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 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 & Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: William H. Bateman.

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: March 20, 1998, as revised by letter dated June 26, 1998.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to permit incorporation of an End-of-Cycle Recirculation Pump Trip.(EOC–RPT) System at Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3.

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. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition of the EOC–RPT System will not involve a significant increase in the probability or consequences of an accident previously evaluated. The EOC–RPT System has been designed to appropriate standards and specifications to ensure that the ability of the plant to mitigate the effects of accidents is maintained. Each division is electrically, mechanically, and physically independent to meet the single failure criterion.

The EOC–RPT System will improve the reactor core thermal response following a turbine trip transient caused by either a turbine control valve fast closure or a turbine stop valve closure. The EOC–RPT will be relied upon to reduce the fuel thermal mechanical transient excursion such that fuel thermal limits are not violated. Under conditions when the system is inoperable, more conservative thermal limits will be enforced.

The new system will utilize existing RPS [Reactor Protection System] logic to initiate the Reactor Recirculation System (RRS) pump trips on a turbine generator trip and a generator load rejection event. The inputs to RPS used by EOC–RPT will be from turbine stop valve (TSV) limit switches and turbine control valve (TCV) oil pressure switches. There will be no direct interface between the EOC–RPT System and the main turbine control system. Thus the new system can not initiate a turbine trip or generator load rejection event. This change does not result in significant increase in the probability of events described in the UFSAR [Updated Final Safety Analysis Report]. Additionally, the probability of inadvertent single or dual recirculation pump trips due to the addition of the EOC–RPT components will not be significantly increased by this modification.

No new challenges to the reactor coolant pressure boundary will result from the incorporation of the EOC–RPT System which could result in a significant increase in the consequences of an accident.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The ECO-RPT System has been designed to appropriate standards and specifications to ensure that no new sequence of events or failure modes will occur such that a transient event will escalate into a new or different type of accident.

The PBAPS UFSAR evaluates several recirculation pump trip events, including the limiting case of a pump seizure. A spurious dual EOC–RPT pump trip is similar to other RRS pump trip events evaluated in the UFSAR and does not represent a different type of accident.

Additionally, this modification will not create any new failure mode or sequences of events that could lead to a different type of accident than previously evaluated. The new EOC–RPT System will not involve any new challenges to a fission product barrier. The EOC–RPT System does not make any changes to the design function of the RRS. Therefore, the new equipment installed by this modification cannot create the possibility of a different type than previously evaluated in the SAR [Safety Analysis Report].

The EOC–RPT System is classified as important-to-safety. Failure or malfunction of the new equipment will not prevent or affect the ability of safety-related or important-to-safety systems to respond to the design basis accidents described in the FSAR [Final Safety Analysis Report].

There will be no software used in the EOC–RPT System. The system logic consists of two electrically and physically separated trip systems; one will be used to trip one EOC–RPT System breaker, and the other will be used to trip the second EOC–RPT System breaker for each pump.

The design of this modification assures that the new system is not susceptible to electromagnetic (EM) emissions and will not cause inadvertent operation of existing plant equipment due to EM emissions.

Based on the previous discussion, the possibility of a new or different kind of accident from any accident previously evaluated will not be created.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

There are no significant reductions in any margin of safety previously approved by the USNRC as a result of this change to the TS. The EOC–RPT System will ensure that fuel thermal limits are not exceeded during the limiting transient. In the event that the EOC–RPT System is determined to be inoperable, specific operating limits are provided in the COLR. In all cases, thermal limits are not exceeded and the margin of safety is not significantly reduced.

The plant LOCA response will not change for present core configurations (i.e., 9 x 9 fuel) with the EOC–RPT System installed. For GE 8 x 8 fuel, which could be used at a future time, there could be a small increase in Peak Cladding Temperature (PCT). This increase would still be well below the 2200° F acceptance limit defined in 10 CFR 50.46.

There will be no significant reduction in the margin of safety as previously approved by the USNRC, since the calculated increase in peak cladding temperature for a core containing limit 8x8 fuel design (BP/P8 x 8R) is a small increase above the previously analyzed peak cladding temperature. Additionally, this modification does not impact the safety function of the RRS piping, thus reactor coolant pressure boundary safety limits are not affected.

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: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for Licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Project Director: Robert A. Capra.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, PeachBottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: May 1, 1998

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to delete requirements for the functional testing of the safety relief valves (SRVs) during each unit startup at Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3.

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. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes to the requirement for functional testing of the SRVs during each unit startup will not significantly increase the probability or consequences of an accident previously evaluated. Elimination of the functional test will not prevent the SRVs from performing their intended safety function. The proposed change to delete the SRV functional test at power should delete a potential initiator of SRV leakage. The remaining testing and inspections will continue to adequately demonstrate the operability of the SRVs for both the safety and depressurization modes.

As a result of deleting the requirement for functional testing of the SRVs during each unit startup and replacing these requirements with the proposed tests contained TS SR [surveillance requirement] 3.4.3.2 and 3.5.1.12, the only change in the frequency of testing of the SRV components is that the main valve disc of the SRVs will be tested every two cycles (approximately four years) as compared to the current one cycle (approximately two years) frequency. As described above, the lift test of the main valve disc is currently performed at an offsite facility. A review of offsite testing data for the years 1987 through 1998 was performed for the PBAPS, Units 2 and 3 SRVs. Since the design of the SRVs is to ensure operation of the overpressurization protection and the ADS [Automatic Depressurization System] function is to reduce reactor pressure during a small break LOCA [loss-of-coolant accident], the review consisted of looking for any failures of the main valve disc to stroke open during setpoint actuation. This review consisted of reviewing ''as-found'' test data since any failures following a rebuild would be found during the final certification testing. Based on a review of as-found data, it was concluded that there were no reported cases of the main disc failing to open during setpoint pressure testing. Therefore, deleting the requirement for functional testing of the SRVs during each unit startup is not expected to negatively impact these test results.

Therefore, eliminating the functional test is not expected to negatively impact these test results or involve a significant increase in the probability of an accident previously evaluated.

As discussed in the PBAPS, Units 2 and 3 Updated Final Safety Analyses Report (UFSAR), analyzed events resulting in a nuclear system pressure increase, such as MSIV [main steam line isolation valve] closure, generator load rejection, turbine trip, failure of the turbine bypass valves to open, and loss of main condenser vacuum, take credit for the SRVs opening to mitigate the consequences of these events. The proposed changes will not increase the consequences of these events, since a series of remaining tests will ensure all SRV components will function. The SRVs will therefore be capable of performing their design functions.

SRV second stage valve leakage can be increased as a result of corrosion/debris introduced on the seating area surface. Second stage leakage, if allowed to continually increase, will eventually start to depressurize the volume above the SRV main valve piston to the extent that sufficient differential pressure will lift the main valve disc. Reactor vessel coolant inventory decrease due to an inadvertent opening of a Safety Relief Valve is an abnormal operating transient event. This event can be a precursor to fuel failure due to gradual loss of coolant, and the mitigation is similar to the small break LOCA. Under the proposed change, it is expected that the probability of SRV leakage will decrease, thus the probability of occurrences of an inadvertent SRV actuation is reduced, therefore reducing the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SRVs will not be operated or tested in a manner contrary to their design. As a result, no new mode of operation is introduced. Therefore, the revised testing will not create a new failure mode of the SRVs which could create the possibility of a new or different kind of accident from any previously evaluated. Since other tests, taken together, confirm the entire SRV assembly functions adequately, this proposed change is justified. The proposed change to delete the SRV functional test at power will not impact the ability of the SRV to open and provide their intended safety function.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

By removing the Technical Specification requirements to perform the in-situ functional testing during startup, the probability of inadvertently opening of a SRV should be reduced through the elimination of a potential initiator of SRV second stage disc leakage and subsequent erosion. This Technical Specification change will aid in decreasing SRV leakage and improve SRV reliability at power operations. Eliminating the SRV in-situ functional test during startup will increase the margin of safety during operations, transients, or accidents. Remaining surveillance testing and inspections assure each component necessary for successful opening of the SRV function properly as designed.

Removal of the functional test will not negatively impact the Technical Specifications lift setpoints of the SRVs necessary for the function of the safety mode. The functional test does not completely test the safety mode of the SRV which is based on the Technical Specifications lift setpoints.

Offsite testing at operating steam pressure ensures the operability of the SRV pilot, second stage, and main valve function. The valves are refurbished and post maintenance testing is performed at a steam pressure of 1040 psig. Upon successful test completion, the valve receives written certification from the lab and is returned to PBAPS for reinstallation. To receive certification, the valve must have zero main seat leakage and meet the acceptance criteria for setpoint pressure. These tests satisfy the requirements of the PBAPS IST [Inservice Testing] Program and TS. The tests contained in the proposed TS SR 3.4.3.2 and 3.5.1.12 will verify the operation of the solenoid and second stage disc movement of all 11 SRVs in the depressurization mode.

The remaining segments of the SRV tests verify the ability of the SRV logic. In summary, this change will not involve a significant reduction in the margin of safety, because of the reduction in SRV degradation, and the remaining tests confirm the valves will function properly when required.

The NRC staff has reviewed the licensee's analysis and, based on this review, this 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: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for Licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Project Director: Robert A. Capra.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 16, 1998.

Description of amendment request: The proposed change would relocate the Safety Review Committee (SRC) review, audit, and related record keeping requirements from the Technical Specifications (TSs) to Chapter 17 of the Final Safety Analysis Report (FSAR).

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) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: This amendment application does not involve a significant increase in the probability or consequences of an accident previously analyzed. The relocation of the SRC review, audit, and related record keeping requirements from the TS to the FSAR does not alter the performance or frequency of these activities. Future changes to the QA [Quality Assurance] program, located in Chapter 17 of the FSAR, which constitute a reduction in commitments, are governed by 10 CFR 50.54(a). Therefore, sufficient controls for these requirements exist and these changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: This amendment application does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes involve the relocation of SRC requirements from the TS to the FSAR. Relocation of these requirements does not affect plant equipment or the way the plant operates. The reviews, audits, and record keeping will continue to be performed in the identical manner as they are currently being performed. Therefore, the proposed revisions cannot create a new or different kind of accident.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: This amendment application does not involve a significant reduction in a margin of safety. The requested Technical Specification revisions relocate SRC review, audit and related record keeping requirements from the TS to the FSAR. These requirements are not being altered by this relocation. The reviews, audits, and record keeping will continue to be performed in the identical manner as they are currently being performed. Any changes to these requirements which constitute a reduction in commitments will be processed in accordance with 10 CFR 50.54(a). Therefore, 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 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: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: S. Singh Bajwa, Director.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York.

Date of amendment request: July 10, 1998.

Description of amendment request: The proposed changes would relocate portions of reactor coolant chemistry requirements from the technical specifications (TSs) to licensee-controlled procedures. Changes to the relocated requirements will then be controlled by the provisions of 10 CFR 50.59.

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. The proposed TS amendment will not significantly increase the probability or consequences of any previously evaluated accidents.

The proposed changes simplify the TS, meet regulatory requirements for relocated TS, and implement the recommendations of the Commission's Final Policy Statement on TS improvements. Future changes to these requirements will be controlled by 10 CFR

50.59. The proposed changes are administrative in nature and do not involve any modification to any plant equipment or affect plant operation. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any previously evaluated accident.

2. The proposed TS amendment will not create the possibility of a new or different kind of accident.

The proposed changes are administrative in nature, do not involve any physical alterations to any plant equipment, and cause no change in the method by which any safety related system performs its function. Therefore, this proposed TS amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS amendment will not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature, will not alter the basic regulatory requirements, and do not affect any safety analyses. Therefore, no margin of safety is reduced as a result of these changes.

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 request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Project Director: S. Singh Bajwa, Director.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: June 5, 1997, and supplemented April 21, 1998.

Description of amendment request:

Part 1—DG Online Testing:

The proposed amendment involves the testing of the standby diesel generators (DGs) and revises the Watts Bar Unit 1 (WBN) Technical Specifications (TSs) to allow additional testing of the DGs on-line during MODES 1 and 2. The proposed changes affect Surveillance Requirement (SR) 3.8.1.14. The testing performed for this surveillance fulfills the requirements of Regulatory Guide 1.9, ''Selection, Design, Qualification, and Testing of Emergency Diesel Generator Units Used as Class 1E Onsite Electric Power Systems at Nuclear Power Plants.'' This testing is performed once every 18 months to ensure that the DGs can start and run continuously for an interval of not less than 24 hours. Specifically, the proposed amendment revises SR 3.8.1.14 and its associated Bases to delete the note which prohibits the performance of the on-line 24 hour test during MODES 1 or 2.

Part 2—DG Battery Testing:

As currently written, the TSs permit testing of the DG batteries and chargers only during MODES 5 and 6 when operability of all four DGs is not required. The proposed amendment would revise the Watts Bar Unit 1 TSs to allow testing of the DG batteries and battery chargers during MODES 1, 2, 3, and 4 as well. Implementation of these changes will require entry into Action B.4 of TS 3.8.1 for the affected diesel.

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:

Part 1—DG Online Testing

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment to allow the 24-hour DG endurance run to be conducted during any mode of operation does not significantly increase the probability or consequences of an accident previously evaluated in Chapter 15 of the FSAR [Final Safety Analysis Report] since the capability to safely shutdown the plant following a LOOP [loss of offsite power], LOCA [loss-of-coolant accident] or LOCA/LOOP coincident with a single failure is maintained throughout the surveillance test. The 24-hour endurance test does not disable any of the automatic actuations and interlocks of the DG control functions, nor prevent the satisfactory completion of the LOOP or LOCA/LOOP loading sequence if a LOOP or LOCA signal is received at any time during the test. Required Class-1E onsite power operability during normal operation, shutdown cooling, loss of offsite power, and accident conditions will be the same.

In addition, the performance of proposed Surveillance Requirement 3.8.1.14 during MODES 1 or 2 will not significantly increase the consequences of perturbations to any of the electrical distribution systems that could result in a challenge to steady state operation or to plant safety systems. Performance of proposed Surveillance Requirement 3.8.1.14 during MODES 1 or 2, or failure of the surveillance, will not cause, or result in, an anticipated operational occurrence with attendant challenges to plant safety systems that has not been previously analyzed for the existing monthly surveillances.

Therefore, TVA concludes that the above change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested changes do not result in a new or different kind of accident from that previously analyzed in WBN's Final Safety Analysis Report. The changes propose to eliminate restrictions of the plant operating modes in which standby DG system testing may be performed but does not change the type of testing performed and are not due to modification of the system design. NRC's assessment of the testing of the DGs in the configuration proposed is documented in Section 8.3.1.12 of Supplements 13 and 14 of the Safety Evaluation Report and in letters dated June 20, 1991, and March 28, 1994.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

As previously stated, performance of proposed Surveillance Requirement 3.8.1.14 during Modes 1 or 2 will not cause, or result in, an anticipated operational occurrence with attendant challenges to plant safety systems that has not been previously analyzed for the existing monthly surveillances. Therefore, implementation of the proposed amendment will not reduce the margin of safety for this system.

Part 2—DG Battery Testing

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the TSs apply only to the DG battery system and do not in any way affect the vital battery system or safety system loads supplied by the vital battery system. The changes do not result in a condition where the design or function of the DGs or DG battery systems would be modified. The DG battery subsystems supply only the control and field flashing power to support a single DG and do not supply any other unrelated system loads or functions. Therefore, manipulation of the DG battery system is not a credible means of perturbing the vital power distribution system and challenging safety systems. In addition, the surveillances for the DG batteries are required to be performed only once every 18 months.

A DG declared inoperable due to the testing must be returned to operable status within 72 hours in accordance with Action B.4 of TS 3.8.1. To ensure this could be achieved, the results of previous performances of the SRs were reviewed. From this review, it was established that in accordance with LCO [limiting condition for operation] 3.8.6, Table 3.8.6–1, Note c, the batteries can be restored within 72 hours to a condition where the charging current is less than 1 ampere. Achieving this charging current for the DG batteries is acceptable for meeting specific gravity limits following a battery recharge for a maximum of 31 days. In addition, the DG sets are occasionally removed from the standby condition to perform preventative and/or corrective maintenance. The intent is to perform this testing in conjunction with other required maintenance activities such that adverse effects on diesel unavailability are minimized. Compliance with the 10 CFR 50.65 Maintenance Rule program requirements for diesel unavailability ensures that any diesel inoperability incurred by this change is minimized.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested changes do not result in a new or different kind of accident from that previously analyzed in WBN's Final Safety Analysis Report. The changes propose to eliminate restrictions of the plant operating modes in which DG battery system testing may be performed but does not change the type of testing performed and are not due to modification of the system design. The requested changes will result in a DG being declared inoperable in accordance with Action B.4 of TS 3.8.1 for the duration of the testing, but does not impact the existing time limitations for the LCO. This change does not alter system performance and does not introduce any new accident initiators or scenarios.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

The proposed amendment concerns only the conduct of testing but does not in any way affect the performance parameters of the safety system or in any way affect the ability of the system to perform its safety function of providing control and field flashing power for the DGs. Consequently, operation of the facility in accordance with the requested changes would 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 amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET l0H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: June 26, 1998

Description of amendment request: The proposed amendment would revise the Watts Bar Nuclear Plant (WBN) Technical Specifications (TS) and associated Bases to delete the power range neutron flux high negative rate reactor trip function based on the analysis provided in Westinghouse Electric Corporation topical report WCAP–11394–P–A, ''Methodology for the Analysis of the Dropped Rod Event.''

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:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The negative flux rate trip deletion does not increase the probability or consequences of core damage accidents resulting from dropped RCCA [rod cluster control assembly] events previously analyzed. The safety functions of other safety related systems and components, which are related to accident mitigation, have not been altered. All other primary protection (reactor trip and ESF) functions are not impacted by the elimination of the negative flux rate trip function. The consequences of accidents previously evaluated in the FSAR [final safety analysis report] are unaffected by this proposed change because no change to any equipment response or accident mitigation scenario has resulted. There are no additional challenges to fission product barrier integrity. No new radiological analyses are required. Therefore the proposed change will have no effect on the probability or consequences of accidents previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The negative flux rate trip deletion does not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed change. The proposed modification does not challenge the performance or integrity of any safety-related systems.

It has been demonstrated that the function of the negative flux rate trip can be eliminated by the approved methodology described in WCAP 11394–P–A. A Watts bar specific analysis has confirmed that for the dropped RCCA and dropped RCCA bank event, no direct reactor trip or automatic power reduction is required to meet the DNB [departure from nucleate boiling] licensing basis for this Condition II event. The negative flux rate trip function is not credited as a backup for any other Chapter 15 event. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The margin of safety associated with the acceptance criteria for any postulated WBN accident is unchanged. It has been demonstrated that the function of the negative flux rate trip can be eliminated by the approved methodology described in WCAP 11394–P–A. Watts Bar specific analysis has confirmed that the dropped RCCA and dropped RCCA bank acceptance criteria (DNB) continue to be met. Conformance to the regulatory criteria for plant operation with the negative flux rate trip deletion is demonstrated, and regulatory limits (DNB) are not exceeded. The modification will have no effect on the availability, operability, or performance of the safety-related systems and components. Therefore, the proposed license amendment 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: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET l0H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

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: June 30, 1998.

Description of amendment request: The proposed license amendment revises Technical Specification 3.1.7, ''Standby Liquid Control System.'' The purpose of the proposed change is to increase the boron concentration in the Standby Liquid Control System for the Perry Nuclear Power Plant Cycle 8 fuel design, and to provide margin for future cycles as required.

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. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will not significantly increase the probability or consequences of an accident previously evaluated. The change will only vary the ratio of borax to boric acid that resides within the Standby Liquid

Control System (SLCS) as the neutron absorber.

Changing the definition of the solution from a mixture of Sodium Pentaborate having a molar ratio of 0.200, to a mixture of borax and boric acid having a nominal molar ratio of 0.229, does not degrade the stability of the solution, change the mixing accuracy requirements, or reduce the temperature margins that might add to the risk of solution crystallization. For each cycle, the reload safety analysis confirms that the SLCS boron concentration will satisfy the Technical Specification requirements for the Perry Nuclear Power Plant (PNPP).

The 5°F margin of safety for solution solubility will continue to be maintained and supported by the Containment Building ambient temperatures and additionally supplemented by auto initiated heating on the SLCS tank and piping. The chosen borax and boric acid molar ratio will continue to maintain a limiting chemical addition mass, to the plus 5°F solubility limit, greater than or equal to the current 0.200 mixture. Any inaccuracies associated with tank temperature, tank volume, chemical analysis, and initial and subsequent chemical additions to the tank will also remain the same.

The primary reactivity control system for postulated accident conditions is the control rod system. The SLCS is a redundant reactivity control system to the control rod system and is used in special plant capability demonstration events cited in Appendix A of the Updated Safety Analysis Report (USAR), Chapter 15, which are extremely low probability non-design basis postulated incidents. There are no postulated accidents evaluated in USAR Chapter 15 that take credit for two or more reactivity control systems preventing or mitigating each accident. There is no increase to the radiological consequences of postulated incidents with the proposed change.

With the implementation of this proposed change, the SLCS will continue to operate and perform to all of its current requirements for providing shutdown margin under operating and ATWS conditions per 10 CFR 50, Appendix A, General Design Criterion (GDC) 26 and 10 CFR 50.62. The proposed change will not alter the operation of any plant equipment assumed to function in response to an analyzed event or otherwise increase its failure probability. Therefore, the proposed change does 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 does not impact the operation of the SLCS or the function of any of the active components. No new system interactions are created by this change and any parameters or conditions that could contribute to the initiation of accidents different than those already evaluated in the USAR are not impacted. The change will only vary the ratio of borax to boric acid that resides within the SLCS as the neutron absorber. The proposed values for solution molar ratio and boron concentration ensure that solution temperature margins are maintained greater than or equal to the current required margin to prevent solution crystallization. As a result, no new failure modes are being introduced.

Changing the definition of the solution from Sodium Pentaborate having a nominal molar ratio of 0.200, to a mixture of borax and boric acid having a nominal molar ratio of 0.229 does not degrade the stability of the solution, change the mixing accuracy requirements, or reduce the temperature margins that might add to the risk of solution crystallization.

Sufficient margin will be maintained to allow for expected deviations in the molar ratio and boron weight as the result of variations in product composition, test measurement inaccuracies, and for chemical addition inaccuracies. The boron concentration required within the SLC system to meet the required shutdown margin, will continue to be determined for each fuel cycle as part of the reload safety analysis per Technical Specifications. The borax and boric acid concentration will remain controlled via the Technical Specification Surveillance Requirements and the associated administrative procedures, USAR text, and existing licensing commitments.

The SLC system will meet its design basis requirements for the weight of boron injected and for maintaining the required temperature margin for system operation. As the result of the proposed change to increase the minimum boron concentration, a new minimum required SLC pump flow rate was determined for compliance with the NRC ATWS Rule 10 CFR 50.62.

The proposed change meets current regulations, maintains the fundamental safety principles of plant design, and the associated margins of safety. With the implementation of the proposed change, the SLCS will continue to operate and perform to all of its current requirements for providing shutdown margin under operating and ATWS conditions per 10 CFR 50, Appendix A, GDC 26 and 10 CFR 50.62. As a result, no new failure modes are being introduced. There are no changes in the methods governing normal plant operations, nor are the methods used to respond to plant transients altered. Therefore, the proposed change does 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 to safety.

The required margin of safety for the SLCS solution ensures an adequate margin of solubility such that no precipitation will occur in the SLC storage tank. The current margin is provided by maintaining a minimum solution temperature that is no less than the saturation temperature corresponding to the concentration of the solution in the storage tank plus 5°F.

This 5°F provides the adequate margin for inaccuracies associated with tank temperature, tank volume, chemical analysis, and initial and subsequent chemical additions to the tank. The proposed change does not impact the inaccuracies associated with tank temperature, tank volume, chemical analysis, and initial and subsequent chemical additions to the tank. The new analytical design values for the molar ratio and boron concentration will continue to maintain the solution temperature margins in excess of the current minimum specified to prevent solution crystallization.

Ambient temperatures within the building that houses the SLC storage tank, the Containment Building, will maintain the solution temperature. Additionally, the solution temperature is maintained by the presence of auto initiated tank heaters and pipe heat tracing. The 5°F margin will be maintained with the new SLCS mole ratio and higher boron concentration with the existing instrument setpoints and administrative controls.

The proposed change maintains the same reactor shutdown margin for the next fuel cycle and does not reduce the margin of safety for any system parameter as defined in the bases for the Technical Specifications. The proposed change will not physically alter the SLCS's physical configuration or components or introduce new system interactions that could produce any parameters or conditions that could contribute to a reduction of safety for any other system or scenario. The change will only vary the ratio of borax to boric acid that resides within the SLCS as the neutron absorber.

Therefore, with the implementation of this proposed change, the SLCS will continue to operate and perform to all of its current requirements for providing shutdown margin under operating and ATWS conditions per 10 CFR 50, Appendix A, GDC 26 and 10 CFR 50.62 and 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: 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: Ronald R. Bellamy (Acting).

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: June 30, 1998.

Description of amendment request: The licensee proposes to delete the calibration requirements for emergency core cooling actuation instrumentation—core spray (CS) subsystem and low pressure coolant injection (LPCI) system auxiliary power monitor since the relays operate from a switched input and functional testing is sufficient to demonstrate the relay pickup/dropout capability.

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. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated:

The proposed change does not involve a change to the plant design or operation. The Auxiliary Power Monitor logic relays installed are tested to fully demonstrate operability without performance of a calibration on the pickup voltage value. The design intent of the relays is to start LPCI and CS pumps as soon as possible without causing loss of the normal or emergency power supplies and within the time frames specified in the LOCA analysis of record. The proposed change does not affect any of the parameters or conditions that contribute to initiation of any accidents previously evaluated. Thus, the proposed change cannot increase the probability of an accident previously evaluated.

The proposed change does not involve a change in the operation of the relays controlling [Residual Heal Removal] RHR and CS Pump start with normal power available nor the initial RHR pump start on a LOCA with normal power not available or the time delay start of the remaining RHR or CS pumps with normal power not available. Failure of the relays to pickup would still result in the start sequence for normal power not available. The logic for both start sequences is verified independent of an instrument calibration and is consistent with the LOCA analysis and the EDG load analysis, therefore, the proposed change does not significantly increase the consequences of any accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated:

This proposed change will not involve any physical changes to plant systems, structures or components (SSC), or the manner in which these SSCs are operated or maintained. The calibration requirement has previously been considered to be met by performance of the Simulated Automatic Actuation Test. Deletion of the calibration requirement will not affect the RHR or CS Pumps starting on a LOCA signal, with or without an [Loss of Normal Power] LNP. The operability of the Auxiliary Power Monitor relays will still be tested under the Functional test and Trip System Logic and Simulated Automatic Actuation tests at the frequencies specified. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety:

This proposed change to delete the calibration requirement for the CS and LPCI Auxiliary Power Monitor functions will not change operation of the RHR or CS Pump start sequences on a LOCA signal, with or without normal power available. The instantaneous logic sequence relays and time delay relays will function to initiate RHR and CS Pump start as designed. RHR and CS Pump start times will remain within the LOCA Safety Evaluation of record. Operability of the relays and associated circuitry are still demonstrated by the Functional test and associated Trip System Logic and Simulated Automatic Actuation tests. Therefore, this 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: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Project Director: Cecil O. Thomas.

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.

Carolina Power & Light Company, et al., Docket No. 50–261, H.B.Robinson Steam Electric Plant, Unit 2, Darlington County, South Carolina

Date of amendment request: June 26, 1998.

Brief Description of amendment: The proposed amendment would revise Technical Specification (TS) 3.7.8, ''Ultimate Heat Sink (UHS),'' to permit an 8-hour delay in UHS temperature restoration period prior to entering the plant shutdown required actions. Also, for the duration of the restoration, service water system (SWS) temperature will be monitored hourly, and should the temperature exceed 99 degrees F, the plant will enter TS 3.7.8 required action A.1, and be in MODE 3 within 6 hours.

Date of publication of individual notice in the **Federal Register**: July 8, 1998 (63 FR 36967).

Expiration date of individual notice: July 22, 1998, for comments; August 7, 1998, for hearings.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

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: March 3, 1998, as supplemented by letters dated April 24 and May 7, 1998.

Description of amendment request: The proposed amendments would revise Figure 5.1–1 of the Technical Specifications (TS) to show the new location of the meteorological tower. The meteorological tower will be relocated to a new location to facilitate use of the current location as a construction site. The proposed TS change does not change the related TS Section 5.1.1.

Date of publication of individual notice in **Federal Register**: June 29, 1998 (63 FR 35293).

Expiration date of individual notice: July 29, 1998.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North 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.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: January 28, 1998 (NRC–98–0002).

Brief description of amendment: The amendment revises technical specification surveillance requirements 4.8.2.1.a.2, 4.8.2.1.b, and 4.8.2.1.c.4 to accommodate new limits associated with the design of the replacement Division II 130/260-volt dc battery.

Date of issuance: July 9, 1998.

Effective date: July 9, 1998, with full implementation prior to restart from the sixth refueling outage.

Amendment No.: 121.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: February 25, 1998 (63 FR 9597).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 9, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: December 10, 1997 (NRC–97–0105), as supplemented January 28 and April 9, 1998.

Brief description of amendment: The amendment revises Technical Specification (TS) 2.2.1, ''Reactor Protection System Instrumentation Setpoints,'' TS 3.3.1, ''Reactor Protection System Instrumentation,'' TS 3.3.6, ''Control Rod Block Instrumentation,'' TS 3.4.1.1, ''Recirculation Loops,'' and the associated Bases to accommodate an upgrade of the power range neutron monitoring system. The amendment also revises the first page of Table 3.3.6–2 to correct a typographical error in the title.

NRC has also granted the request of Detroit Edison Company to withdraw a portion of its December 10, 1997, application. The proposed change would have revised TS Surveillance Requirement 4.3.1.3 and its associated Bases to indicate response time testing is performed only on applicable channels. However, following discussions with the NRC staff, the licensee withdrew the proposed change in a letter dated April 9, 1998 (NRC–98–0037). For further details with respect to this action, see the application for amendment dated December 10, 1997, as supplemented above, and the licensee's letter dated April 9, 1998, which withdrew this portion of the application for license amendment, and the staff's Safety Evaluation enclosed with the amendment. The above documents 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 listed below.

Date of issuance: July 13, 1998.

Effective date: July 13, 1998, with full implementation prior to restart from the sixth refueling outage. Implementation of this amendment shall include preparation of Design Calculation DC–5721, Volume I, and performance of a human factors review for the installation of the plant modification as described in the licensee's application dated December 10, 1997, as supplemented January 28 and April 9, 1998, and as evaluated in the staff's safety evaluation attached to this amendment.

Amendment No.: 122.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: January 14, 1998 (63 FR 2279). The January 28 and April 9, 1998, letters provided clarifying information and updated TS pages that were within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 13, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: April 20, 1998.

Brief description of amendments: The amendments revise Tables 3.3–3 and 4.3–2 of the Technical Specifications of each unit, correcting the operation mode applicability of the control room area ventilation actuation logic and relays from ''All'' to ''1, 2, 3, 4.''

Date of issuance: July 9, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 167—Unit 1; 159—Unit 2.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 20, 1998 (63 FR 27761).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 9, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of amendment request: October 2, 1996.

Brief description of amendments: The amendments revise the ANO–1&2 TSs by relocating selected TS requirements related to instrumentation from the TS to the Updated Final Safety Analysis Report. The NRC provided guidance to all holders of operating licenses or construction permits for nuclear power reactors on the proposed TS changes in Generic Letter 95–10, ''Relocation of

Selected Technical Specifications Requirements Related to Instrumentation,'' dated December 15, 1995.

Date of issuance: July 13, 1998.

Effective date: July 13, 1998, to be implemented within 30 days.

Amendment Nos.: 192 and 191.

Facility Operating License Nos. DPR–51 and NPF–6: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 15, 1997 (62 FR 2188).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 13, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: March 27, 1997, as supplemented by letters dated April 3, July 21, October 23, November 13, and December 12, 1997, January 21, January 29, March 23, May 1, May 19, and May 21, May 28, and June 12, 1998.

Brief description of amendment: The amendment changes Appendix A Technical Specification by increasing the Spent Fuel Pool storage capacity from 1088 to 2398 fuel assemblies and by increasing the maximum fuel enrichment from 4.9 w/o (weight percent) to 5.0 w/o U–235.

Date of issuance: July 10, 1998.

Effective date: July 10, 1998.

Amendment No.: 144.

Facility Operating License No. NPF–38: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 2, 1997 (62 FR 63732).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 1998.

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 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: March 12, 1998.

Brief description of amendments: The amendments revised Turkey Point Units 3 and 4 Facility Operating Licenses and Technical Specifications to remove certain license conditions and oudated references, and to incorporate an organizational change.

Date of issuance: July 9, 1998.

Effective date: July 9, 1998.

Amendment Nos.: 198 and 192.

Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revised Turkey Point Units 3 and 4 Facility Operating Licenses and Technical Specifications.

Date of initial notice in **Federal Register**: April 8, 1998 (67 FR 17225).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 9, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Niagara Mohawk Power Corporation, Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station Unit Nos. 1 and 2, Oswego County, New York

Date of applications for amendments: May 15, 1998 (two letters, one for each unit).

Brief description of amendment: The amendments change administrative sections of the Technical Specifications to reflect a restructuring of licensee's Nuclear Division upper management organization.

Date of issuance: July 7, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 162 and 83.

Facility Operating License Nos. DPR–63 and NPF–69: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: June 2, 1998 (63 FR 30026).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 7, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Stawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Project Director: S. Singh Bajwa.

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 application for amendments: September 28, 1995, and April 23, 1998.

Brief description of amendments: The amendments revise Technical Specification 3/4.8.1.2, ''Electrical Power Sources—Shutdown,'' by adding a note to surveillance requirement 4.8.1.2 that identifies those surveillances which are required to be performed during Modes 5 and 6 (cold shutdown and refueling, respectively).

Date of issuance: July 14, 1998.

Effective date: July 14, 1998.

Amendment Nos.: 212 and 192.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 8, 1995 (60 FR 56369).

The April 23, 1998, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 14,1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: September 29, 1998, as supplemented February 6, 1998, April 17, 1998, and June 4, 1998.

Brief description of amendment: This amendment revises the allowable value and trip setpoint for the main steam isolation high steam flow input into limiting condition for operation.

Table 3.3.2–1, function 4.d.

Date of issuance: July 14, 1998.

Effective date: July 14, 1998.

Amendment No.: 71.

Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 22, 1997 (62 FR 54876).

The February 6, 1998, April 17, 1998, and June 4, 1998, 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 July 14, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: June 6, 1996, as supplemented September 26, 1997, January 23, 1998, and May 19, 1998 (TS–372).

Brief description of amendments: Changes to the technical specifications administrative controls related to quality assurance, and other administrative and editorial changes.

Date of issuance: July 9, 1998.

Effective date: July 9, 1998.

Amendment Nos.: 233, 252, and 211.

Facility Operating License Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1996 (61 FR 50346).

The supplemental letters dated September 26, 1997, January 23, and May 19, 1998 did not change the original no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 9, 1998.

No significant hazards consideration comments received: None.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: April 24, 1998.

Brief description of amendment: This amendment changed Technical Specification (TS) Section 3/4.3.1.1, ''Reactor Protection System Instrumentation,'' TS Section 3/4.3.2.1, ''Safety Features Actuation System Instrumentation,'' TS Section 3/4.3.2.2, ''Steam and Feedwater Rupture Control System Instrumentation,'' and the associated TS bases. The TS tables of response time limits were relocated to the Davis-Besse Technical Requirements Manual. Other changes in these TS sections were also made consistent with the relocation.

Date of issuance: July 7, 1998.

Effective date: July 7, 1998.

Amendment No.: 225.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: April 24, 1996, as supplemented December 15, 1997, and June 22, 1998.

Brief description of amendments: These amendments revise Technical Specifications (TS) Section 15.7, ''Radiological Effluent Technical Specifications (RETS).'' Portions of the RETS are moved to licensee-controlled documents consistent with Nuclear Regulatory Commission guidance on TS improvements. Other sections of the TSs have also been revised consistent with the removal of portions of the RETS.

Date of issuance: July 13, 1998.

Effective date: July 13, 1998, with full implementation within 45 days. Implementation shall include relocation of certain Technical Specification requirements to licensee-controlled documents, as described in the licensee's application dated April 24, 1996, as supplemented by letter dated December 15, 1997, and June 22, 1998, and evaluated in the staff's safety evaluation attached to the amendments.

Amendment Nos.: 184 and 188.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 5, 1996 (61 FR 28620) The December 15, 1997, and June 22, 1998, submittals provided additional clarifying information and updated TS pages. This information was within the scope of the original **Federal Register** notice 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 July 13, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Dated at Rockville, Maryland, this 22nd day of July 1998.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–20111 Filed 7–28–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17f–1(g)—SEC File No. 270–30—OMB Control No. 3235–0290

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

- Rule 17f–1(g) Requirements for reporting and inquiry with respect to missing, lost, counterfeit or stolen securities.

Rule 17f–1(g), under the Securities Exchange Act of 1934 (''Act''), requires that all reporting institutions (i.e., every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System and bank insured by the FDIC) maintain and preserve a number of documents related to their participation in the Lost and Stolen Securities Program (''Program'') under Rule 17f–1. The following documents must be kept in an easily accessible place for three years, according to paragraph (g): (a) copies or all reports of theft or loss (Form X–17F–1A) filed with the Commission's designee: (b) all agreements between reporting institutions regarding registration in the Program or other aspects of Rule 17f–1; and (c) all confirmations or other information received from the Commission or its designee as a result of inquiry.

Reporting institutions utilize these records and reports (a) to report missing, lost, stolen or counterfeit securities to the data base, (b) to confirm inquiry of the data base, and (c) to demonstrate compliance with Rule 17f–1. The Commission and the reporting institutions' examining authorities utilize these records to monitor the incidence of thefts and losses incurred by reporting institutions and to determine compliance with Rule 17f–1. If such records were not retained by reporting institutions, compliance with Rule 17f–1 could not be monitored effectively.

The Commission estimates that there are 24,518 reporting institutions (respondents) and, on average, each respondent would need to retain 33 records annually, with each retention requiring approximately 1 minute (33 minutes or .55 hours). The total estimated annual burden is 13,484.9 hours (24,518×.55 hours=13,484.9). Assuming an average hourly cost for clerical work of $10, the average total yearly record retention cost for each respondent would be $5.50. Based on these estimates, the total annual cost for the estimated 24,518 reporting institutions would be approximately $134,849.

Rule 17f–1(g) does not require periodic collection, but does require retention of records generated as a result of compliance with Rule 17f–1. Under Section 17 (b) and (f) of the Act, the information required by Rule 17f–1(g) is available to the Commission and Federal bank regulators for examinations or collection purposes. Rule 0–4 of the Act deems such information to be confidential. Please note 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 control number.

General Comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 22, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20247 Filed 7–28–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23329; 813–168]

The Goldman Sachs Group, L.P.; Notice of Application

July 22, 1998.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') exempting certain employees' securities companies from all provisions of the Act, except sections 9 and 36 through 53 and applicable rules and regulations; and certain other employees' securities companies from all provisions of the Act, except section 9, sections 17 and 30, sections 36 through 53, and applicable rules and regulations.

APPLICANT: The Goldman Sachs Group, L.P. (''GS Group'').

FILING DATES: The application was filed on July 21, 1997. Applicant has agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

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 August 13, 1998, 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, NW, Washington, DC 20549. Applicant, 85 Broad Street, New York, New York 1004.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942–0526, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. (202) 942–8090).

Applicant's Representations

1. GS Group, a Delaware limited partnership, together with its corporate and partnership subsidiaries, is a leading international investment banking organization. The GS Group, and entities that are controlling, controlled by, or under common control with, the GS Group (collectively, ''Goldman Sachs'' and individually a ''Goldman Sachs Entity'') propose to establish certain investment vehicles (''Funds'') as a means of rewarding and retaining Goldman Sachs' limited partners, officers, employees, and consultants. The principal purposes of the Funds are to enhance the investment opportunities available to these persons, strengthen the relationship between employment and wealth creation, attract talented professionals to Goldman Sachs, and provide additional investment opportunities to retired partners.

2. The Funds will be organized as partnerships, limited liability companies or other entities. Each Fund will enable its investors (i) to co-invest with Goldman Sachs in investment opportunities and (ii) to invest in opportunities identified by Goldman Sachs or in collective investment programs with investment strategies developed, monitored or overseen by Goldman Sachs. Interests in the Funds (''Interests'') will be sold without a sales load. The Funds will be divided into three categories—Bridge Street Funds, Battery Place Funds, and Stone Street Funds.

3. The Bridge Street Funds include the Bridge Street Diversified Funds, Bridge Street Real Estate Funds and Bridge Street Separate Investment Funds. These Funds will be offered and sold to (i) individual limited partners [1] who are active in Goldman Sachs business and share in the profits and losses of the business (''Participating Limited Partners''), (ii) individual limited partners who are no longer active in Goldman Sachs' business and who earn a fixed return on their capital invested in the GS Group, members of their families, trusts, and family investment vehicles (''Other Individual Limited Partners'' and, together with Participating Limited Partners, ''GS Limited Partners''), and (iii) Qualified Participants (as defined below) of the GS Limited Partners (collectively, the ''Bridge Street Investors'').

4. The Battery Place Funds include the Battery Place Diversified Funds,

[1] Interests also could be sold to entities resident outside the U.S. that are wholly-owned and controlled by the individual limited partners and formed for tax purposes.

Battery Place Real Estate Funds, and Battery Place Separate Investment Funds. These Funds will be offered and sold to managing directors of Goldman Sachs (''Managing Directors'') who are not GS Limited Partners and their Qualified Participants as defined below (collectively, the ''Battery Place Investors''). Battery Place Funds also may be offered and sold to Bridge Street Investors and Stone Street Investors described below.

5. The Stone Street Funds include Stone Street Diversified Funds, Stone Street Real Estate Funds, and Stone Street Separate Investment Funds. These Funds will be offered and sold to certain officers and employees of Goldman Sachs (''Eligible Employees'') [2] and certain consultants of Goldman Sachs (''Consultants''),[3] and Qualified Participants, defined below, of Eligible Employees and Consultants (collectively, the ''Stone Street Investors''). Stone Street Funds also may be offered and sold to Bridge Street Investors and Battery Place Investors. No Battery Place or Stone Street Fund will invest in a Bridge Street Fund.

6. All GS Limited Partners, Managing Directors, Eligible Employees, and Consultants will be accredited investors under Rule 501(a)(6) of Regulation D (''Regulation D'') under the Securities Act of 1933. GS Limited Partners that invest in the Bridge Street Funds may also be accredited investors under Rule 501(a)(5) of Regulation D.

7. Goldman Sachs has a number of officers and employees located outside the United States. Approximately 70 of these persons would qualify as Bridge Street Investors, 50 would qualify as Battery Place Investors, and 850 would qualify as Stone Street Investors. These persons are not citizens of the United States and are not subject to U.S. federal income taxes. To maintain their tax status, these persons desire to make investments in the Funds through a separate investment vehicle organized in a non-U.S. jurisdiction (''Nonresident Investment Vehicle''). Applicants expect that the Nonresident Investment Vehicles will be owned by the relevant Eligible Investors in proportion to the ownership interests that each investor would have had in the relevant Fund itself, and that the indirect ownership interest of each Eligible Investor in the relevant Fund will therefore be the same as if all such Eligible Investors had invested directly in the Fund.

8. Bridge Street Investors, Battery Place Investors, Stone Street Investors, Goldman Sachs, and investors in the Nonresident Investment Vehicles are collectively referred to as ''Eligible Investors.'' A ''Qualified Participant'' eligible to invest in the Funds is a spouse, parent, child, spouse of child, brother, sister or grandchild of a GS Limited Partner, a Managing Director who is not a GS Limited Partner, an Eligible Employee or Consultant (each an ''Eligible Family Member''), or a family investment vehicle, foundation, charitable organization or trust established by, or for the benefit of, a GS Limited Partner, a Managing Director, an Eligible Employee or Consultant, or their Eligible Family Members. A Qualified Participant must qualify as an accredited investor under Rule 501(a) of Regulation D.

9. The manager of each Fund (''Manager'') will be an entity that is directly or indirectly wholly-owned by a Goldman Sachs Entity or the Participating Limited Partners. The Manager will register as an investment adviser under the Investment Advisers Act of 1940 if required under applicable law. The Manager will be responsible for administering the Fund's investment program and business affairs except for certain administrative responsibilities that may be delegated to other Goldman Sachs Entities or third parties.

10. Interests in a Fund will not be transferable, except with the express consent of the Manager and then only to another Eligible Investor, the Manager, or Goldman Sachs. Interests will not be redeemable at the option of the investor, except upon the death of the investor. Goldman Sachs will have the option to purchase an investor's Interest at a price determined by a formula described in the offering documents for the Fund if an Other Individual Limited Partner retires as a limited partner or a Participating Limited Partner retires and does not become an Other Individual Limited Partner, or, if for any reason, the employment of a Battery Place or Stone Street Investor terminates. The terms of any repurchase option will be disclosed to Eligible Investors in the offering documents for each Fund. The failure of an investor in a Fund to make a required capital contribution to the Fund may result in the forfeiture of the portion of the investor's Interest attributable to the defaulted amount and to any remaining capital commitment. The terms of any forfeiture provision will be disclosed in the offering documents for each Fund. Upon repurchase, a Battery Place or a Stone Street Investor will receive at least the lower of (i) the amount invested by the investor, plus interest (at an interest rate disclosed in the offering document for the applicable Battery Place or the Stone Street Fund), and with appropriate deduction for any distributions made by the Fund to the investor, and (ii) the fair market value of the investor's Interest in the Battery Place or Stone Street Fund as determined at the time of repurchase, less the portion, if any, of the fair market value attributable to the Fund's use of leverage, if any.

11. The Manager of a Fund may be paid an annual management fee by the Fund, and in the case of a Bridge Street Fund may also be paid a special allocation.[4] The Manager also may receive a performance-based fee (a ''carried interest'') based on the net gains of the Fund's investments in addition to any amount allocable to the Manager's capital contribution. Any Goldman Sachs Entity or a Manager may be compensated for providing services to entities in which a Fund makes an investment, and may engage in market-making activities in the securities of entities in which a Fund makes an investment. Employees of Goldman Sachs may be compensated for serving as officers or directors of entities in which the Funds make an investment.

12. Goldman Sachs or a third party may lend to the Funds or become a senior or preferred limited partner or other senior equity holder of a Fund. Any such loans made by Goldman Sachs or a third party will be on commercially reasonable arm's length terms. To the extent that a senior interest may be a security within the meaning of the Act, the senior interest holder will be required to be an Eligible Investor.

13. The Funds may co-invest with a Goldman Sachs Entity. The Funds also may co-invest with an investment vehicle for investors unaffiliated with Goldman Sachs and over which a Goldman Sachs Entity exercises investment discretion (''Third Party Funds''). Co-investments with a Third Party Fund will not be subject to condition 3 below. No Fund will purchase or otherwise acquire any security issued by a registered investment company if the Fund immediately after the purchase or

[2] Eligible Employees will be experienced professionals in the investment banking, asset management, securities or commodities businesses, or in administrative, financial, accounting, legal or related operational fields.

[3] Consultants will have levels of expertise and sophistication at least comparable to, and in most cases exceeding, those of Eligible Employees.

[4] In order to ensure that GS Limited Partners who do not participate in a Bridge Street Fund do not, in effect, bear the direct and indirect costs of establishing and administering that Fund, GS Group or an affiliated person of GS Group within the meaning of section 2(a)(3)(C) of the Act may become an interest holder of each Bridge Street Fund and receive a special allocation. Special allocations will have priority over all other Fund allocations.

acquisition will own in the aggregate more than 3% of the total outstanding voting stock of the registered investment company.

14. The Manager will have discretion as to the distribution of any cash flow or any proceeds derived from a Fund's investments, which will depend on the investment objective of the Fund and will be described in the Fund's offering documents. The offering documents for each Fund also will describe the following types of information to the extent material to an Eligible Investor's investment decision: investment objectives and policies (including a discussion of leveraging strategies, if any, that will be utilized by the Fund); the organizational structure of the Manager and the Fund; risk factors; any conflicts of interest; procedures relevant to the offering of Interests in the Fund; use of proceeds from the offering; relationship between the Fund and any other Fund; the management of the Fund, including any fees to be paid to the manager; taxation of Interests; procedures of allocations and distributions; limits on the transferability of Interests in the Funds; special provisions applicable to the Funds, including any relating to disposition of an Interest in the Fund in the event of termination of the investor's relationship with Goldman Sachs; and such other matters as Goldman Sachs considers material to the investment decision of Eligible Investors. The offering documents will be made available to all Eligible Investors.

15. The Manager will send investors in each Fund annual reports regarding the operations and assets of the Fund. Each Fund's annual report will contain audited financial statements with disclosure of outstanding borrowings of the Fund. Each investor in a Fund also will receive a report of his or her distributive share of income, gains, losses, credits and other items for U.S. federal income tax purposes resulting from the operation of the Fund during the tax year.

Applicant's Legal Analysis

1. Section 6(b) of the Act provides that the Commission shall exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission shall consider, in determining from which provisions of the Act the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines ''employees' securities company'' to include any investment company all of whose outstanding securities are beneficially owned by (a) current or former employees, or persons on retainer, of one or more affiliated employers, (b) immediate family members of such persons, or (c) such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 from selling or redeeming their securities. Section 6(e) of the Act provides that in connection with any order exempting an investment company from any provisions of section 7, certain specified provisions of the Act will be applicable to the company, and to other persons in their transactions and relations with the company, as though the company were registered under the Act, if the Commission deems it necessary or appropriate in the public interest or for the protection of investors.

3. Applicant requests an order under sections 6(b) and 6(e) of Act exempting the Bridge Street Funds from all provisions of the Act, except sections 9 and 36 through 53 and applicable rules and regulations. Applicant also requests an order under sections 6(b) and 6(e) of the Act exempting the Battery Place and the Stone Street Funds from all provisions of the Act, except section 9, certain provisions of sections 17 and 30, and sections 36 through 53, and applicable rules and regulations.[5]

A. Bridge Street Funds

4. Applicant asserts that the requested exemption for the Bridge Street Funds is consistent with the protection of investors because the Bridge Street Investors who are Participating Limited Partners participate in the profits and losses of Goldman Sachs directly and those who are Other Individual Limited partners hold substantial partnership capital of GS Group. Applicant states that the capital of Goldman Sachs is held by over 300 Participating and Other Individual Limited Partners, their family members or trusts, and institutional limited partners. These same persons (or their Qualified Participants), other than institutional limited partners, comprise the class of Bridge Street Investors. Accordingly, given the unique community of interests among the Bridge Street Investors and Goldman Sachs, applicant asserts that the expectation that Goldman Sachs will act in the ordinary course of its business to maximize the profits of GS Limited Partners provides ample protection to the Bridge Street Investors. Applicant states that, given the relationship of trust and confidence between the Bridge Street Investors and Goldman Sachs, and their knowledge of the operations of Goldman Sachs, the proposed exemption would be appropriate. Applicant acknowledges that new Bridge Street Funds may be created and existing Bridge Street Funds may raise capital from new investors in reliance upon the requested order only so long as Goldman Sachs continues its current form of organization as a limited partnership.

B. Battery Place and Stone Street Funds

5. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, to sell any security or other property to the company or to purchase any security or other property from the company. Applicant requests an exemption to the extent necessary to (i) permit any Goldman Sachs Entity, acting as principal, to engage in any transaction directly or indirectly with any Battery Place or Stone Street Fund or any entity controlled by a Battery Place or Stone Street Fund: (ii) permit any Battery Place or Stone Street Fund to invest in or engage in any transaction with any entity, acting as principal, (a) in which the Battery Place or Stone Street Fund, any entity controlled by the Fund or any Goldman Sachs Entity has invested or will invest, or (b) with which the Battery Place or Stone Street Fund, any entity controlled by either a Battery Place or Stone Street Fund or any Goldman Sachs Entity is or will become otherwise affiliated; and (iii) permit any partner or other investor in a Third Party Fund (a ''Third Party Investor''), acting as principal, to engage in any transaction directly or indirectly with a Battery Place or Stone Street Fund or any entity controlled by a Battery Place or Stone Street Fund.

6. Applicant asserts that the requested exemption is necessary, among other purposes, to enable the Funds to make investments in companies, properties, or securities which are offered by a Goldman Sachs Entity (or any GS Partners' Investment Vehicle or Third party Fund) to investors, or in which a Goldman Sachs Entity (any GS Partners' Investment Vehicle or Third Party Fund) is investing or may have made an

[5] The requested order would supersede an existing order. *Stone Street Fund 1984,* Investment Company Act Release Nos. 19905 (Nov. 24, 1993) (notice) and 19978 (Dec. 21, 1993) (order).

investment. Applicant states that the Battery Place or Stone Street Investors will be fully informed of the possible extent of each Fund's dealings with Goldman Sachs, GS Partners' Investment Vehicles, and Third party Funds, and as professionals employed in the securities, or a related, industry will be able to evaluate the attendant risks. Moreover, applicant asserts that the community of interest among the Battery Place or Stone Street Investors and the GS Limited Partners will reduce the risk of abuse in these transactions.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons, and affiliated persons of such persons, from participating in joint transactions with a registered investment company unless authorized by the Commission. In passing on applications for such orders under rule 17d–1, the Commission will consider whether the participation of the investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicant requests an exemption from section 17(d) and rule d–1 to permit the Battery Place or Stone Street Funds to engage in transactions in which affiliated persons of the Funds or affiliated persons of those persons (including Third Party Investors) may be participants.

8. Applicant asserts that section 17(d) and rule 17d–1 might prevent the Battery Place and the Stone Street Funds from engaging in transactions in which a Battery Place or a Stone Street Investor, a Goldman Sachs Entity, or a Third Party Fund, are participants. Applicant submits that restricting these types of investments by a Fund would undermine a principal rationale of the Battery Place and the Stone Street Funds, i.e., to provide a vehicle for the Battery Place and the Stone Street Investors to invest alongside Goldman Sachs (acting through a Goldman Sachs Entity, GS Partners' Investment Vehicles or Third Party Funds). Applicant further asserts that attractive investment opportunities of the types considered by the Battery Place and the Stone Street Funds often require each participant to make available funds in amounts greater than those available to a Fund alone and, in certain instances, a Fund may only invest in these opportunities as a participant with a Goldman Sachs Entity, a GS Partners' Investment Vehicle or a Third Party Fund. Applicant submits that permitting joint investments by a Goldman Sachs Entity, a GS Partners' Investment Vehicle, a Third Party Fund and a Battery Place and/or Stone Street Fund will not lead to the disadvantageous treatment of either Fund because Goldman Sachs will be acutely concerned with its relationship with the Battery Place and the Stone Street Investors.

9. Section 17(e) of the Act and rule 17e–1 under the Act limit the compensation an affiliated person of a registered investment company, or an affiliated person of such a person, may receive when acting as agent or broker for the company. Applicant requests an exemption from section 17(e) to permit a Goldman Sachs Entity (including the Manager), acting as an agent or broker, to receive compensation from a Battery Place or Stone Street Fund in connection with the purchase or sale by either Fund of securities, provided the fees or other compensation are ''usual and customary.'' Applicant states that fees or other compensation will be deemed ''usual and customary'' only if (i) the Battery Place or Stone Street Fund is purchasing or selling securities alongside other unaffiliated third parties or Third Party Funds who are also similarly purchasing or selling securities, (ii) the fees or other compensation that are charged to the Battery Place or Stone Street Fund are also charged to the unaffiliated third parties and Third Party Funds, and (iii) the amount of securities being purchased or sold by the Battery Place or Stone Street Fund does not exceed 50% of the total amount of securities being purchased or sold by the Battery Place or Stone Street Fund and the unaffiliated third parties or Third Party Funds. Applicant also requests an exemption from paragraph (b) of rule 17e–1 to permit each Battery Place and Stone Street Fund to comply with rule 17e–1 without having a majority of the board of directors (or comparable body) of the Manager who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, take the actions and give the approvals that are required under the rule. Applicant states that because the officers and directors of the Manager will be affiliated persons, without the relief requested, a Battery Place or a Stone Street Fund could not comply with rule 17e–1(b).

10. Section 17(f) of the Act provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with Commission rules. Section 17(f) also prohibits a company which is a member of a national securities exchange and which trades in securities for its own account from acting as a custodian except in accordance with rules prescribed by the Commission. Rule 17f–1 under the Act specifies the requirements that must be satisfied for a registered management investment company to use a broker-dealer as a custodian.

11. One of Goldman Sachs' principal operating businesses in the United States is Goldman, Sachs & Co. (''GS&Co.''), a New York limited partnership that is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act''), and a member of the National Association of Securities Dealers and the New York Stock Exchange. Applicant requests an exemption from section 17(f) of the Act and rule 17f–1 under the Act to the extent necessary to permit GS&Co. or another Goldman Sachs Entity to act as custodian of Fund assets without a written contract. Applicant states that any securities of the Battery Place and the Stone Street Funds held by GS&Co. will have the protection of a fidelity bond. Applicant also requests an exemption to the extent necessary to establish one or more brokerage accounts at GS&Co. in which the Battery Place and the Stone Street Funds will participate without the necessity of separately segregating the securities and investments of each Fund. Applicant states that this relief is needed to facilitate the investment by the Battery Place and the Stone Street Funds in a joint account established by GS&Co. for investment by Goldman Sachs Entities in certain types of investments. Applicant believes that the financial position of GS&Co., the regulation to which it is subject under the Exchange Act and the relationship of the Battery Place and Stone Street Investors, as Eligible Employees of and Consultants to GS&Co., should adequately protect the Funds' assets.

12. Section 17(g) of the Act and rule 17g–1 under the Act generally require the bonding of officers and employees of a registered investment company who have access to the securities or funds of the company. Rule 17g–1 requires that a majority of the investment company's directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, take certain actions and give certain approvals. Applicant requests relief from the disinterested director approval requirement because all directors of the Manager will be affiliated persons of the Funds, and the Battery Place and the Stone Street Funds therefore could not comply with the requirement.

13. Section 17(j) of the Act and rule 17j–1 under the Act require a registered investment company to adopt a written

code of ethics that requires every access person of the company to report to the company concerning transactions in any security in which the access person has, or by reason of the transactions acquires, any direct or indirect beneficial ownership in the security. Applicant requests an exemption from section 17(j) and rule 17j–1 (except for the antifraud provisions of paragraph (a)) because the requirements are burdensome and unnecessary as applied to the Funds. Applicant asserts that compliance with these requirements would be unnecessary in light of the community of interest between investors in the Funds and Goldman Sachs and the proposed conditions to the requested order.

14. Applicant also requests an exemption from paragraphs (a), (b), (c), (d), and (h) of section 30 of the Act to exempt the Battery Place and the Stone Street Funds from filing annual and quarterly reports with the Commission. Applicant states that the pertinent information in the filings must, under the terms of the organizational documents of the Funds, be sent to their investors. Exemptive relief is also requested under section 30(e) of the Act to permit the Battery Place and the Stone Street Funds to report annually to their investors in the manner prescribed by the organizational documents of the Funds. Lastly, applicant requests an exemption from the requirements of section 30(h) of the Act so that the Manager of each Battery Place and each Stone Street Fund and all persons who are directors or officers of a Manager and each member of the board of directors, if any, of a Battery Place or a Stone Street Fund and any other persons who may be deemed members of an advisory board of a Battery Place or a Stone Street Fund will not be required to file Forms 3, 4, or 5 under section 16 of the Exchange Act with respect to their ownership of Interests in a Battery Place or a Stone Street Fund.

Applicant's Conditions

The Battery Place and the Stone Street Funds agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by Section 17(a) or section 17(d) and rule 17d–1 (the ''Section 17 Transactions'') will be effected only if the Manager determines that: (i) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the investors in the Fund and do not involve overreaching of the Fund or its investors on the part of any person concerned; and (ii) the transaction is consistent with the interests of the investors in the Fund, the organizational documents of the Fund and the Fund's report to its investors. In addition, each Manager will record and preserve a description of each Section 17 Transaction, its findings, the information or materials upon which its findings are based and the basis for the findings. All required records will be maintained for the life of each Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff. All required records will be maintained in an easily accessible place for at least the first two years.

2. Each Manager will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Funds, or any affiliated person of an affiliated person, promoter, or principal underwriter.

3. Each Manager will not invest the funds of any Funds in any investment in which a ''Co-Investor'' (as defined below) has acquired, or proposes to acquire, the same class of securities of the same issuer, if the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Fund and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (i) gives the Manager sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (ii) refrains from disposing of its investment unless the Fund has the opportunity to dispose of the Fund's investment prior to or concurrently with, on the same terms as, and *pro rata* with the Co-Investor. The term ''Co-Investor'' means any person who is: (i) an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Fund (other than a Third Party Fund); (ii) Goldman Sachs; (iii) an employee, officer, or director of Goldman Sachs; (iv) a GS Partners' Investment Vehicle; (v) any entity (other than a Third Party Fund) with respect to which Goldman Sachs provides management, investment management or similar services as manager, investment manager, or Manager or in a similar capacity, and for which it may receive compensation, including without limitation, management or performance fees, carried interests entitling it to share disproportionately in income and capital gains, or similar compensation; or (vi) a company (other than a Third Party Fund) in which an officer or director of the Manager acts as an officer, director, or Manager, or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (i) to its direct or indirect wholly-owned subsidiary, to any company (''Parent'') of which the Co-Investment is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (ii) to immediate family members of the Co-Investor or a trust or other investment vehicle established for any such family member; (iii) when the investment is comprised of securities that are (a) listed on a national securities exchange registered under section 6 of the Exchange Act; (b) national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 under the Exchange Act; or (c) listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. In any case where purchases or sales are made by a Fund from or to an entity affiliated with the Fund by reason of a 5% or more investment in such entity by a director, officer, or employee of the Manager, such individual will not participate in the Manager's determination of whether or not to effect the purchase or sale.

The Bridge Street, Battery Place, and Stone Street Funds agree that any order granting the requested relief will be subject to the following conditions:

5. Each Manager will send to each investor who had an Interest in its Fund, at any time during the fiscal year then ended, financial statements of the Fund audited by the Fund's independent accountants. At the end of each fiscal year, each Manager will make a valuation or have a valuation made of all of the assets of the Fund as of such fiscal year end. The valuation of the Fund assets may be by independent third parties appointed by the applicable Manager and deemed qualified by such Manager to render an opinion as to the value of Fund assets, using such methods and considering such information relating to the investments, assets and liabilities of the Fund as such persons may deem appropriate, but in the case of an event subsequent to the end of the fiscal year

materially affecting the value of any Fund asset or investment, the Manager may revise the valuation as it, in its sole discretion, deems appropriate. In addition, each Manager shall send a report to each person who was an investor in its Fund at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the investor of his or its federal and state income tax returns and a report of the investment activities of the Fund during such year by such date as may be required to permit investors to comply with income tax filing requirements (including extensions).

6. Each Fund and its Manager will maintain and preserve, for the life of the Fund and at least two years thereafter, all accounts, books, and other documents as constitute the record forming the basis for the audited financial statements and annual reports of such Fund to be provided to the investors, and agree that all such records will be subject to examination by the Commission and its staff. All required records will be maintained in an easily accessible place for at least the first two years.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20246 Filed 7–28–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40240; File No. SR–Amex–98–16]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Relating to the Announcement of Closing Rotations in Equity and Narrow-Based Index Options After 4:02 p.m.

July 21, 1998.

I. Introduction

On April 8, 1998, the American Stock Exchange, Inc. (''Amex'' or ''The Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''the Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder to permit a closing rotation in equity options to be announced after 4:02 p.m. The proposed rule change was published for comment in the **Federal Register** on May 12, 1998.[3] No comments were received.

On July 9, 1998, the Amex submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposal and approves Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

On May 14, 1997, the Exchange received approval to move the close of equity and narrow-based index options trading from 4:10 p.m. to 4:02 p.m.[5] This change was prompted by improvements in dissemination of closing prices in the underlying securities, the limited ability of public customers to react as quickly as professional traders to news announcements in the last ten minutes of trading, and the difficulties experienced by options specialists and registered traders trying to make orderly options markets without the ability to hedge or otherwise offset market risk with transactions in the underlying stock. Following receipt of approval, Rule 1 was amended to reflect this change to 4:02 p.m. The Amex states that the provision that permits a closing rotation [6] to be initiated due to unusual market conditions was severely limited inadvertently when the rule was changed to require that notice of the closing rotation had to be publicly disseminated before 4:02 p.m. As currently written, the rule gives Floor Officials only two minutes to assess an unusual market condition, determine whether it is appropriate to have a closing rotation, and disseminate the news of the rotation to the public.

The Amex proposes to amend Exchange Rule 1 to permit a closing rotation in equity and narrow-based index options to be announced after 4:02 p.m., provided such a rotation does not begin sooner than five minutes after it is announced.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Section 6(b)(5).[7] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market, and in general, to further investor protection and the public interest.

The Commission believes that it is reasonable for the Exchange to amend its rules to provide Floor Officials with more than two minutes to assess an unusual market condition, determine whether it is appropriate to have a closing rotation, and disseminate the news of the rotation to the public.[8] The Commission notes that the Chicago Board Options Exchange (''CBOE''), the Pacific Exchange (''PCX''), and the Philadelphia Stock Exchange (''PHLX'') permit trading rotation notice to be given after the close of trading.[9]

The Commission also finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Amendment clarified the filing's description of a prior rule change and the scope of the proposed rule change. For these reasons, the Commission finds good cause for approving Amendment No. 1 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether it is consistent with the Act. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39959 (May 5, 1998), 63 FR 26231.

[4] *See* Letter from Scott Van Hatten, Legal Counsel, Amex, to Michael Walinskas, Deputy Associate Director, SEC, dated July 9, 1998 (''Amendment No. 1''). Amendment No. 1 clarified that the Exchange had received approval to move the close of narrow-based index options trading from 4:10 p.m. to 4:02 p.m., as set forth in Securities Exchange Act Release No. 38640 (May 14, 1997), 62 FR 28081 (May 22, 1997). Amendment No. 1 also amended the filing to permit the announcement of closing rotations in narrow-based index options, in addition to equity options, after 4:02 p.m.

[5] Securities Exchange Act Release No. 38640 (May 14, 1997), 62 FR 28081 (May 22, 1997).

[6] A closing rotation is a trading procedure to determine appropriate closing prices or quotes for each series of options on an underlying stock.

[7] 15 U.S.C. 78f(b)(5).

[8] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] *See* CBOE Rule 6.2, Interpretations and Policies .02; PCX Rule 6.64, Commentary .01; and PHLX Rule 1047, Commentary .03.

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the SR–Amex–98–16 and should be submitted by August 19, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–98–16) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20188 Filed 7–28–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40250; File No. SR–CBOE–98–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Exchange Fees

July 22, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 1998,[3] the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant partial accelerated approval of the fees relating to non-members.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to change the subscription fee structure for the Exchange Bulletin by adding a fee for a new alternative of receiving the Bulletin via e-mail.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, Proposed Rule Change

1. Purpose

The Exchange proposes to change the subscription fee structure for members and non-members receiving the Exchange Bulletin, and provide for the option of obtaining the Bulletin via e-mail. The proposed change would be effective beginning July 1, 1998, for members. For non-members the fees would be effective upon the date the Commission approves that portion of the proposal. Currently, one hard copy of the Bulletin is provided free of charge to all effective members, and each additional copy is $100.00. For non-members, the Bulletin subscription fee is $100.00 for each hard copy. The Exchange proposes to give the option of subscribing to the Bulletin via e-mail over the Internet to both members and non-members. Under the proposed changes a member's first copy (whether hard copy or via e-mail) will be free of charge, and each additional copy via e-mail delivery would be $50.00. The fee to non-members for e-mail delivery will be $50.00 for each copy.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and others using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge, for members,[6] imposed by the Exchange, the change effecting members has become effective as of July 1, 1998, pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (e)(2) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, affecting members, 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed Amendment Nos. 1 and Amendment No. 2 to the proposed rule change on July 14, 1998, and July 15, 1998, respectively. *See* Letter from Stephanie C. Mullins, Attorney, CBOE, to Heather Seidel, Attorney, Division of Market Regulation (''Division''), Commission, dated July 13, 1998 (''Amendment No. 1''); and Letter from Stephanie C. Mullins, Attorney, CBOE to Kelly McCormick, Attorney, Division, Commission, dated July 14, 1998 (''Amendment No. 2''). Amendment No. 1 amends the part of the filing relating to fees charged to non-members to request the Commission's approval pursuant to Section 19(b)(2) under the Act, and to ask for accelerated approval for that portion of the filing. In Amendment No. 2, the Exchange explained the procedure for informing its membership and the affected non-members of the proposed rule change.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] The proposed rule change also amends fees charged to non-members for delivery of the Exchange Bulletin. The portion of this proposed ruled change that affects non-members has been filed pursuant to Section 19(b)(2) of the Act and the Commission is granting partial accelerated approval for that part of the filing.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(e)(2).

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR–CBOE–98–28 and should be submitted by August 19, 1998.

V. Commission's Findings and Order Granting Partial Accelerated Approval of the Proposed Rule Change

The Commission finds that the Exchange's proposal to provide the option of obtaining the Exchange Bulletin via e-mail to non-members at a cost of $50.00 per copy is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act [9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its facilities.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register.** The Commission believes that accelerated approval of the proposal is appropriate because the Exchange is merely adding an alternative method for non-members to receive the Exchange Bulletin that will facilitate access to the Bulletin by both members and non-members at a cost less than the current fee for a hard copy of the Exchange Bulletin.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [10] that the proposed rule change relating to non-members, is hereby partially approved on an accelerated basis.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20190 Filed 7–28–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40253; File No. SR–NYSE–98–12]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc., Relating to Changes in Bond Listing Procedures and Practices

July 23, 1998.

I. Introduction

On April 15, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its bond listing procedure and practices. On April 30, 1998, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on May 13, 1998.[4] No comments were received regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The NYSE proposes to amend its Listed Company Manual (''Manual'') to alter certain provisions regarding listing requirements for debt securities and other debt security practices. Those provisions in the Manual include:

(i) *Interest Payments.* Currently, Paragraph 204.18 requires that an issuer or its paying agent notify the Exchange whenever the issuer makes an interest payment, and the Exchange also requires an issuer to notify the press and the Exchange whenever the issuer does not meet its interest obligations. The proposal would delete the obligation to inform the Exchange of interest payments made, whether by confirmation cards or otherwise. And, the proposal also adds to the end of Paragraph 204.18 a cross-reference to 202.00, which reminds issuers that they are required to disclose material information (including the inability to meet payment obligations).

(ii) *Multiple Facsimile Signatures.* Paragraph 501.06 presently requires bonds to be executed, either manually or by facsimile machine, by two of the issuer's officers. Whether the issuer uses one facsimile signature (and one manual signature) or two facsimile signatures, the Exchange currently requires the issuer to submit an opinion of counsel that states that the use of each facsimile signature (a) is specifically authorized by (or at least is not inconsistent with) the issuer's charter or by-laws and the issue's indenture, and (b) is valid and effective under the laws of the state of the issuer's incorporation. When a single facsimile signature is used, the opinion of counsel also must state that the actual facsimile signature to be used has been duly adopted. Where two facsimile signatures are used, the issuer must submit to the Exchange the board resolution adopting the actual signatures to be used.

Although the Exchange would continue to require issuers to authorize the use of facsimile signatures, to adopt the specific facsimile signatures to be used, to comply with charter, by-law and indenture provisions, and to comply with state laws, it proposes to discontinue the practice of requiring issuers to submit opinions of counsel and board resolutions in respect of those requirements.

(iii) *Discharge of Obligation upon Default of Funds.* Paragraph 602.01 and Subparagraph (D) of Paragraph 703.06 currently each require, in part, that a debt security's indenture may not discharge the issuer's payment obligation if the funds representing payment are deposited with the trustee, depository or paying agent more than ten days before the date on which the funds become available to bond holders. The Exchange would remove this requirement from the Manual.

(iv) *Clearance of Terms.* Subparagraph (B) of Paragraph 703.06 presently asks an issuer to submit the indenture and registration terms to the Exchange prior to applying to list a bond and to receive the Exchange's clearance of the terms of those documents before the company is permitted to use a ''listing intention

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made technical corrections to the proposed rule change and clarified the purpose of the proposal. *See* Letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated April 29, 1998. (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 39973 (May 7, 1998), 63 FR 26660.

statement'' in the offering prospectus. The proposal would eliminate these requirements and would amend Subparagraph (B) to clarify the remaining portions of that Subparagraph. The remaining portions provide guidance on the contents of a description of the issue. The Exchange has clarified that the description of the issue is part of the listing application for the security and is reviewed prior to the date the security is listed.[5]

(v) *Delivery of Prospectus, Mortgage and/or Indenture.* Subparagraph (F) of Paragraph 703.06 currently requires the issuer to provide with its listing application four copies of a security's prospectus if the debt security has been issued for 12 months or less and to provide one copy of the prospectus if the debt security has been issued for more than 12 months. The Exchange also requires the issuer to provide one final copy of the issuer's mortgage or indenture.

The Exchange proposes to change those document delivery requirements if the issuer makes the document publicly available by means of a disclosure service (such as Disclosure, Inc.) that the Exchange finds satisfactory. If a document is available in that manner, the Exchange would no longer require the issuer to submit the final copy (in the case of a mortgage or indenture) and would require the issuer to submit only one copy of the prospectus, even if the debt security has been issued for 12 months or less.

(vi) *Opinion of Counsel.* Subparagraph (G) of Paragraph 703.06 now requires an issuer to provide the Exchange with an opinion of counsel that verifies such things as the validity of the debt securities and the authorization for the issuance. Pursuant to the proposal, for issues that a registered broker-dealer purchases from the issuer with a view toward resale, whether through an underwritten public offering or otherwise, the Exchange would accept as sufficient an issuer's affirmation of the existence of the opinion of counsel. The Exchange would continue to require the submission of the opinion of counsel for Rule 144A offerings.

In addition, the Exchange would eliminate certain of the items that currently must appear in the opinion of counsel. Specifically, the Exchange would no longer require the opinion: (a) To set forth the date, nature, and status of orders or proceedings of regulatory authorities relating to the issuance of securities that are the subject of a listing application; (b) to state that the Board has authorized the issuing and listing of the securities; and (c) to disclose an affiliation of the counsel to the issuer.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act. In particular, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act.[6] Section 6(b)(5) requires, among other things, that the rules of the Exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission agrees with the Exchange that the proposed changes to the Manual should facilitate the listing process for debt securities and should update rules and policies to better conform with current practices. By eliminating certain requirements in the Manual, it should become less burdensome for companies to follow relevant procedures. This in turn should improve the transparency of the debt securities market for all market participants, including investors. With less burdensome rules and procedures, additional companies might list their debt securities on the NYSE, thus increasing the number of these securities accessible through and subject to the Exchange's trading and disclosure systems.

Moreover, the Commission feels that such benefits should outweigh any minimal protection afforded by eliminated provisions. Having carefully reviewed each of the proposed changes to the Manual, the Commission agrees with the Exchange's representation that each of the eliminated provisions and document submission requirements are no longer necessary.

More specifically, the Commission agrees that an issuer's obligation to report to the press and to the Exchange failures to meet payment obligations and unusual conditions and circumstances related to and issuer's ability to meet interest payments sufficiently protects investors without also continuing to require that issuers notify the Exchange each time an interest payment is made.

Second, as to facsimile signatures, recognizing the continued requirements that issuers authorized the use of such signatures, adopt the specific facsimile signature to be used, and comply with relevant state laws and charter, by-law, and indenture provisions, it is appropriate to eliminate additional submissions of opinions of counsel and board resolutions related to such requirements. The Commission notes the increased acceptance of facsimile signatures and agrees with the Exchange that the remaining requirements related to such signatures should adequately protect the public.

Third, the Commission concurs with the elimination of the prohibition against a debt security's indenture discharging the issuer's payment obligation if the funds representing payment are deposited with the trustee, depository or paying agent more than ten days before the date on which the funds become available to bond holders. As the Exchange represented, the prohibition addressed the practice of depositing securities with the trustee in advance of a payment obligation as a way of satisfying a restrictive covenant where the indenture does not provide for prepayment. The Exchange adopted those provisions to protect bondholders prior to the enactment of the Trust Indenture Act and the widespread use of early call provisions. However, the Exchange notes that the practice of advance security deposits is no longer in use. The Commission agrees that this along with protections now afforded bondholders by the Trust Indenture Act and the fact that an issuer's defeasance does not normally discharge that issuer's payment obligation to the bondholder as set forth in the debt instrument weigh in favor of removing the ban.

Fourth, the Commission also finds that elimination of early submission and prior clearance requirements are permissible. The Commission notes that when evaluating a bond for listing, the Exchange currently examines whether the issuer's equity security is listed on the Exchange or, if the issuer does not list an equity security on the Exchange, whether a nationally recognized security rating organization has rated the debt issue no lower than a Standard & Poors' ''B'' rating or its equivalent. This evaluation should give the Exchange sufficient indication of whether the issuer should be permitted to move forward with the listing process prior to a debt security's listing. Furthermore, the Exchange explains that nothing in its filing on

[5] *See* Letter From Fred Siesel, Director, Fixed Income Markets, Exchange, to Kenneth M. Rosen, Attorney, Division of Market Regulation, Commission, dated July 10, 1998 (''July 10 Letter'').

[6] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

bond listing procedures in any way changes the Exchange's substantive debt listing standards nor the Exchange's enforcement of those standards, such as the requirement that to be listed the issue must have a par value of at least $5,000,000.[7]

As for early review of indenture terms, what continued to necessitate such review was the prohibition against defeasance discussed above. However, by eliminating that requirement, the Exchange eliminates the last justification of its need to pre-clear indenture and registration terms. Despite these changes, the Commission notes that the Exchange has represented that issuers may still contact the Exchange to discuss the issue's eligibility prior to engaging in the process of completing a listing application when it is uncertain as to whether it will qualify for listing.

Fifth, the Commission finds that it is appropriate for the Exchange to ease certain document submission requirements when those documents are readily available to the Exchange through electronic services. The Exchange has clarified that for such a service to qualify as satisfactory, it must be one to which the Exchange subscribes, and the NYSE also has noted its access to other SEC public document services through the Internet.[8] Consequently, in carrying out its review of debt securities, the Exchange should continue to have ready access to documents which no longer need to be physically submitted by an issuer.

Sixth, substituting the affirmation of the existence of an opinion of counsel for a copy of the opinion should also facilitate the listing process. The Commission accepts the Exchange's representation that its physical possession of the opinion of counsel is no longer necessary because in connection with an underwritten offering the Exchange rarely has need to refer to that opinion, and the Exchange can direct the issuer to provide an opinion should the need arise.[9] Moreover, eliminating content from such opinion should not have a substantial impact. Because the Exchange represents that it has rarely used or relied upon the opinion's description of regulatory proceedings, deletion appears to sacrifice little, while serving to simplify the opinion. In addition, the Commission accepts the use of a listing-application signature of an authorized officer of the issuer as assurance of the board's authorization of the issue and of listing the issue on the Exchange. Moreover, should the Exchange ultimately need to review an opinion, it then could inquire as to any affiliation of the opinion's writer with the issuer.[10]

Finally, the Commission wishes to emphasize again that the proposal does not affect the NYSE's substantive quantitative debt listing standards.[11] And, having reviewed the proposal in light of the requirements and protections that remain in the Manual, the Commission believes that adequate information will remain publicly available to inform investors about the quality of issuers and their debt securities.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–98–12), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20248 Filed 7–28–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40249; File No. SR–PCX–98–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Listing and Maintenance Fees for Nasdaq Listings

July 22, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange.[3] 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 Exchange proposes to modify its listing and maintenance fees so that certain issues listed on both the PCX and the Nasdaq Stock Market, Inc. (''Nasdaq'') will be deemed to be ''dually listed'' for purposes of the Exchange's Listing Fee Schedule. The text of the proposed rule change is set out below. Additions are italicized. Deletions are bracketed.

LISTING FEE SCHEDULE

Original Listing Fees—Original Listing fees are fixed fees in that they are not charged by the number of shares being listed:	
Common Stock, dually listed on NYSE [or] AMEX, *or Nasdaq National Market*	$10,000.00
Common Stock, not listed on NYSE [or] AMEX, *or Nasdaq National Market*	20,000.00
Annual Maintenance Listing Fee (Billed and payable January of each year following initial listing):	
For one issue, dually listed on NYSE [or] AMEX, *or Nasdaq National Market*	$1,000.00
For one issue, not listed on NYSE [or] AMEX, *or Nasdaq National Market*	2,000.00

[7] *See* July 10 Letter.

[8] *See* July 10 Letter.

[9] *See* July 10 Letter.

[10] *See* Amendment No. 1.

[11] *See* July 10 Letter.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1994).

[2] 17 CFR 240.19b–4 (1997).

[3] The proposed rule change was originally filed on June 19, 1998 pursuant to Section 19(b)(3)(A)(ii) of the Act. The amendment converted the proposed rule change to a filing pursuant to Section 19(b)(2) of the Act because the proposed rule change modifies fees that apply to issuers. Letter from Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX to Kelly McCormick, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated July 10, 1998.

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX 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

Currently, under the exchange's listing fee schedule, common stock that is dually listed on both the PCX and either the New York Stock Exchange (''NYSE'') or the American Stock Exchange (''Amex'') is subject to an original listing fee of $10,000.00. Common stock not dually listed on both the PCX and either the NYSE or the Amex is subject to an original listing fee of $20,000.00. The Exchange recognizes that Nasdaq is a primary listing association and that Nasdaq bears the primary obligation to ensure that its issuers meet the appropriate listing standards. Therefore, the PCX will be conducting listing maintenance reviews for Nasdaq issues on an annual basis along with other dually listed issues (*i.e.*, those listed on the NYSE and Amex) and not on a quarterly basis. The Exchange believes that the proposal will encourage issuers listed on Nasdaq to list on the PCX.

Proposed Fee Change

To reflect the cost of dual listings and annual maintenance listing reviews, the PCX is proposing to change the following fees. Currently, the listing fee for an original listing of any Nasdaq common stock issue (Nasdaq National Market (''NNM'') and Nasdaq SmallCap Market (''SCM'')) is $20,000.00. Under the proposal, the fee would be reduced to $10,000.00 for NNM issues. Currently, the annual maintenance listing fee for any one Nasdaq listed issue is $2,000.00. Under the proposal, the fee would be reduced to $1,000.00 for any one NNM issue.[4]

[4] The original listing fee and annual maintenance fee for SCM securities would remain unchanged. The listing maintenance review for SCM securities will also remain unchanged, and continue to be conducted quarterly. Telephone call between Robert P. Pacileo, Attorney, PCX and Kelly McCormick, Attorney, Division of Market Regulation, SEC, July 6, 1998.

2. Basis

The Exchange believes that this proposal is consistent with Section 6(b) of the Act,[5] in general, and Section 6(b)(4),[6] in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its facilities.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PCX consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–32 and should be submitted by August 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20191 Filed 7–28–98; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40247; File No. SR–SCCP–98–03]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Reducing Certain Trade Recording Fees

July 22, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 30, 1998, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to extend on a pilot basis for three months through September 30, 1998, a reduction in SCCP's fee schedule for trade recording fees for certain specialists.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at

[1] 15 U.S.C. 78s(b)(1).

the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP proposes to extend, for a three month period, its pilot program reducing SCCP's trade recording fees for certain specialists. On February 9, 1998, the Commission temporarily approved the trade recording fee reduction effective for trades settling January 2, 1998, through April 30, 1998.[3] Subsequently, on May 4, 1998, the Commission approved an extension of the pilot program through June 30, 1998.[4]

Prior to the approval and implementation of the pilot program, SCCP charged a trade recording fee of $.47 per side for regular trades. The pilot program bifurcates the category of trade recording fees for regular trades into trades not matching with PACE orders and trades matching with PACE orders.[5] The trade recording fees for trades not matching with PACE orders remains $.47 per side. The pilot program reduces SCCP's trade recording fees for trades matching with PACE orders. For these trades, the trade recording fee is reduced to: (i) $.27 per side for the first 2,500 trades per month and (ii) $.10 per side for trades in excess of 2,500 per month.

SCCP has been working closely with the Philadelphia Stock Exchange, Inc. to reevaluate its fees. In connection with this effort, SCCP is proposing to extend the pilot program reducing these trade recording fees on a temporary basis through September 30, 1998.

SCCP believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act,[6] which requires that the rules of a registered clearing agency provide for equitable allocation of reasonable dues, fees, and other charges for services which it provides to its participants.

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 39630 (February 9, 1998), 63 FR 7848.

[4] Securities Exchange Act Release No. 39948 (May 4, 1998), 63 FR 25538.

[5] PACE, an acronym for the Philadelphia Stock Exchange Automated Communication and Execution System, is a real time order routing and execution system.

[6] 15 U.S.C. 78q–1(b)(3)(D).

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received.

. III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by SCCP, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(e)(2) thereunder.[8] 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, including whether the proposed rule change is consistent with the Act. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to the File No. SR–SCCP–98–03 and should be submitted by August 19, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(e)(2).

[9] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20189 Filed 7–28–98; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Free Trade Area of the Americas

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for public comment on the operation of the Committee of Government Representatives on the Participation of Civil Society established in connection with the Free Trade Area of the Americas (FTAA) negotiations.

SUMMARY: The Committee of Government Representatives on the Participation of Civil Society (''Government Committee on Civil Society'' or ''Committee'') has been established by the 34 Western Hemisphere[1] countries participating in the FTAA negotiations. The Trade Policy Staff Committee (TPSC) requests public comments on how the Committee should carry out its mandate to receive, analyze, and report on the full range of comments received from civil society from throughout the hemisphere on trade matters related to the FTAA process. Civil Society refers to interested non-governmental parties, including from environmental, business, consumer, academic and labor sectors. The TPSC also invites public comments on the U.S. positions described below.

FOR FURTHER INFORMATION: For procedural questions concerning public comments contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–3475. All questions concerning the Government Committee on Civil Society should be directed to Bryan Samuel, U.S. lead to the Committee and Deputy Assistant Secretary of State, (202) 647–2532.

SUPPLEMENTARY INFORMATION: On April 18–19, 1998, at the second Summit of the Americas in Santiago, President Clinton and the 33 other democratically-elected leaders in the Western Hemisphere initiated the FTAA

[1] Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, United States, and Venezuela.

negotiations, agreed to conclude them by 2005, and committed to achieve concrete progress toward that objective by the end of the century. The FTAA negotiations will take into account the broad social and economic agenda defined by the leaders in 1994 at the first Summit of the Americas with a view to contributing to raising living standards, to improving the working conditions of all people in the Americas and to better protecting the environment.

The leaders have agreed that the FTAA will be a balanced and comprehensive agreement covering such matters as: Tariffs; non-tariff barriers affecting trade in goods and services; trade in agricultural products; subsidies; investment; intellectual property rights; government procurement; technical barriers to trade; safeguards against import surges; rules of origin; competition policy; antidumping and countervailing duties; sanitary and phytosanitary measures; and dispute resolution procedures. The leaders also have committed to strive to make trade liberalization and environmental policies mutually supportive and to further secure the observance and promotion of worker rights. In addition, the trade ministers of the 34 countries have repeatedly expressed their joint commitment to transparency in the FTAA process, with a growing recognition of the need for open communication with the public throughout the hemisphere. The participating countries have agreed to conduct the FTAA negotiations in a manner that will build broad public understanding of and support for the FTAA.

In preparation for the Santiago Summit meeting, the trade ministers in March 1998 jointly recognized and welcomed the interests and concerns expressed by a broad spectrum of interested non-governmental parties—particularly labor, business, environmental and academic groups in the hemisphere—regarding the FTAA. They encouraged these and other groups, such as those representing consumers, to provide their views on trade matters related to the FTAA. To facilitate this process, the ministers agreed to establish the Government Committee on Civil Society, thus creating for the first time a mechanism for any interested non-governmental parties from across the Hemisphere to provide their views directly to the FTAA process. The Committee will receive comments from interested non-governmental parties, analyze them, and provide a report on the full range of views for the trade ministers' consideration at their next meeting in October 1999.

Committee Procedures

At a June 1998 meeting, the FTAA governments established general guidelines for the Committee. The first meeting of the Committee will be convened by Canada in Miami in October 1998. The Committee will select a permanent Chair and draft a notice that will solicit written comment from interested non-governmental parties on trade matters related to the FTAA. These procedures are expected to be supplemented after the October meeting.

U.S. Objectives

The U.S. Government seeks to ensure that the Committee functions as a direct and effective channel of communication between governments participating in the FTAA negotiations and the full range of private, non-governmental interests in the hemisphere so that the views they represent can be taken into consideration. The U.S. view is that the establishment of the Committee should ensure that interested non-governmental parties in each FTAA country can provide their comments directly to the FTAA process without first being filtered by their governments. In the U.S. view, the Committee should establish an inclusive and transparent process for eliciting the views of a broad range of interested non-governmental parties throughout the Hemisphere and ensure that all comments provided are given serious consideration. In addition, the Committee's functions should be flexible and should be capable of modification over time as required to assist the negotiations.

The U.S. Government has proposed that the Committee provide several avenues for soliciting public comments, including the solicitation of written comments and public hearings. The United States also has proposed that comments received by the Committee be made available on the FTAA Homepage (www.FTAA–ALCA.org) both so that interested non-governmental parties can see the comments provided by others and so that the government negotiators have immediate access to those comments.

The United States has proposed that the Committee make publicly available its report well in advance of the October 1999 FTAA trade ministerial meeting so that interested non-governmental parties can comment to their governments on the report in advance of the ministerial meeting and thus facilitate a considered discussion of the report by the ministers at the meeting.

The solicitation of public comments by the Committee will complement, not replace, U.S. Government processes for seeking public comments. It also will supplement comments the U.S. Government has received and will continue to receive on an ongoing basis.

Public Comments

To prepare the U.S. position for the initial meeting of the Government Committee on Civil Society in October 1998, the TPSC invites written comments on the operation of the Committee and on the U.S. Government views and proposals described above, as well as any other comments on the Committee in relation to the FTAA process in general. A separate notice requesting comments on U.S. positions and objectives for the nine negotiating groups was published at 63 FR 36470–36473 (July 6, 1998). As stated in that notice, USTR will seek additional public comment at a later date on other issues related to the FTAA.

Those persons wishing to submit written comments should provide twenty (20) typed copies (in English) no later than Wednesday, August 26, 1998, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, Room 501, 600 17th Street, NW., Washington, DC 20508.

If the submission contains business confidential information, twenty copies of a confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC. An appointment to review the file may be made by calling Brenda Webb (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 98–20216 Filed 7–28–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–98–4077]

Notice of Request for Clearance of a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget's (OMB) approval of a new information collection. This information collection will be used to: (1) Gather information from motor carriers regarding their expectations/experience with compliance reviews conducted by the FHWA Office of Motor Carriers (OMC); and (2) provide a baseline to measure improvements in customer satisfaction. The information collected from the survey will help the OMC assess the usefulness of the compliance review process, including whether the reviews are being conducted in a business-like manner, and what additional services and information the OMC could provide.

DATES: Comments must be submitted on or before September 28, 1998.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Schafer, (202) 366–2953, Office of Motor Carriers, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Office hours are from 7:30 a.m. to 4:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Motor Carrier Assessment of Compliance Reviews.

Background: The mission of the FHWA's OMC is to promote safe transportation of passengers and goods on the Nation's highways. In the performance of its duties, the OMC conducts periodic compliance reviews with motor carriers in each State. The reviews are normally held at the motor carrier's principal place of business. Compliance reviews are investigations of the carrier's operation to determine whether they meet the safety fitness standards. To meet the safety fitness standards, a motor carrier must demonstrate that it has adequate safety management controls in place which function effectively to ensure acceptable compliance with applicable safety requirements. Upon completion of a compliance review, FHWA assigns the carrier either a satisfactory, conditional, or unsatisfactory rating. A satisfactory rating means the carrier has established and is using adequate safety management controls that meet FHWA's safety fitness standards. A conditional rating means a carrier has adequate controls that could result in violations of the Federal Motor Carrier Safety Regulations. An unsatisfactory rating means that the carrier has inadequate controls that have resulted in violations of the regulations. Compliance reviews can result in enforcement actions against a carrier for violations of safety regulations. A civil fine is a primary enforcement tool used by the FHWA to induce regulatory compliance.

A survey of selected review participants will provide the information necessary for the OMC to assess these compliance reviews so that ongoing improvements to the compliance review process can be accomplished. The information will be collected on a standardized questionnaire, via mail or by telephone. Respondents will be advised of the purpose for the survey and the confidentiality of their responses, either by an accompanying letter or orally by telephone. The questionnaire will request respondents to provide information pertaining to the compliance review process (i.e., notification, purpose and length of the review). The information will be collected from motor carriers shortly after FHWA or State officials complete a compliance review. It is estimated that approximately 9,200 compliance reviews are conducted annually. Of the 9,200 reviews, surveys will be conducted for approximately 1,500 reviews. The results of the surveys will be analyzed and presented in a report to the management of the OMC. This report will be used for ongoing improvements to the compliance review process.

Respondents: The individuals asked to respond to the survey will be the motor carrier employee who signed for receipt of the compliance review.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden: 250 hours.

Frequency: Collection will occur following completion of each of the 1,500 reviews which will be identified for the survey.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Electronic Availability: An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** electronic bulletin board service (telephone number: 202–512–1661). Internet users may reach the **Federal Register**'s WWW site at http://www.access.gpo.gov/su__docs.

Authority: 49 U.S.C. 322(a), 329(a), 31133(a); and 49 CFR 1.48.

Issued on: July 23, 1998.

George S. Moore, Jr.,

Associate Administrator for Administration.

[FR Doc. 98–20231 Filed 7–28–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 123X)]

Union Pacific Railroad Company—Abandonment Exemption—in Butler County, IA

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon and discontinue service over a 5.95-mile line of railroad on the Bristow Branch from milepost 288.8 near Clarksville to milepost 294.75 near Allison, in Butler County, IA. The line traverses United States Postal Service Zip Codes 50619 and 50602.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 28, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 10, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 18, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 3, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by July 29, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 23, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–20255 Filed 7–28–98; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. See 49 CFR 1002.2(f)(25).

Notices

Federal Register
Vol. 63, No. 145
Wednesday, July 29, 1998

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.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Electronic Records Work Group draft report; Appendix C

Correction

In notice document 98–19466, beginning on page 39187, in the issue of Tuesday, July 21, 1998, make the following correction:

1. On page 39191, in the third column, in the thirteenth line, ''N1–XX–XX–X'' should be added following ''in''.

2. On page 39192, in the second column, under **Submitting a PLan Package for Scheduling Electronic Source Records**, in the ninth line, ''120'' should read ''180''.

BILLING CODE 1505-01-D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Electronic Records Work Group Draft Report; Introductory Information

Correction

In notice document 98–19465, beginning on page 39186, in the issue of Tuesday, July 21, 1998, make the following correction.

On page 39187, in first column, in the ninth line from the bottom, ''Federal agency review and this'' should be added following ''June''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 13-98-023]

RIN 2115-AE84

Regulated Navigation Area; Strait of Juan de Fuca and Adjacent Coastal Waters of Washington; Makah Whale Hunting

Correction

In proposed rule document 98–19423, beginning on page 39256, in the issue of Wednesday, July 22, 1998, make the following corrections:

1. On page 39256, in the second column, under the heading **SUMMARY**, in the tenth line, ''of'' should read ''to''.

§ 165.1310 [Corrected]

2. On page 39257, in the third column, under § 165.1310, in paragraph (a), in the second line, ''48°10–0'N,'' should read ''48°10.0'N,''.

3. On page 39257, in the third column, under §165.1310, in paragraph (a), in the eighth line, ''124°29.0'W'' should read ''124°29.5'W''.

4. On page 39258, in the first column, in paragraph (d), in the fifth line delete the word ''is''.

5. On page 39258, in the first column, in paragraph (d), in the eighth line, ''Mekah'' should read ''Makah''.

6. On page 39258, in the first column, in paragraph (e), in the first line, ''Mekah'' should read ''Makah''.

BILLING CODE 1505-01-D

federal register

Wednesday
July 29, 1998

Part II

Environmental Protection Agency

40 CFR Parts 144, 145, and 146

Class V Injection Wells Underground Injection Control Regulations, Revisions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144, 145 and 146

[FRL–6129–4]

RIN 2040–AB83

Revisions to the Underground Injection Control Regulations for Class V Injection Wells

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing changes to the Class V Underground Injection Control (UIC) regulations that would add new requirements for three categories of Class V wells that pose a high risk when located in ground water-based source water protection areas being delineated by states under the 1996 Amendments to the Safe Drinking Water Act (SDWA). Class V motor vehicle waste disposal wells in such areas would either be banned or would have to get a permit that requires fluids released in those wells to meet the drinking water maximum contaminant levels (MCLs) at the point of injection. Class V industrial waste disposal wells in ground water-based source water protection areas also would be required to meet the MCLs at the point of injection, and large-capacity cesspools in such areas would be banned. EPA is proposing these new requirements to address three categories of wells that it has identified as posing a high risk of ground water contamination based on available information. These are motor vehicle waste disposal wells, industrial waste disposal wells, and cesspools in ground water-based source water protection areas. Targeting the requirements to those wells will achieve substantial protection of underground sources of drinking water.

EPA also is proposing to consolidate the Class V UIC regulations in a ''plain-English'' format to make it easier for Class V well owners and operators to understand when and how the regulations apply to them. To that end, EPA recommends that you review the proposed regulatory language first, and then refer to the preamble for background and additional rationale not included in the rule.

DATES: EPA must receive public comment, in writing, on the proposed regulations by September 28, 1998. *Comments will only be accepted on certain new sections of the proposed rule (see Table 1 of the Preamble).*

ADDRESSES: Send written comments to the UIC Class V, W–98–05 Comment Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 401 M Street, SW, Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW., East Tower Basement, Washington, DC 20460. Comments may be submitted electronically to owdocket@epamail.epa.gov.

Please submit all references cited in your comments. Facsimiles (faxes) cannot be accepted. EPA would appreciate one original and three copies of your comments and enclosures (including any references). Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope.

The proposed rule and supporting documents, including public comments, are available for review in the Water Docket at the above address. For information on how to access Docket materials, please call (202) 260–3027 between 9 a.m. and 3:30 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Safe Drinking Water Hotline, phone 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time. For technical inquiries, contact Robyn Delehanty, Underground Injection Control Program, Office of Ground Water and Drinking Water (mailcode 4606), EPA, 401 M Street, SW, Washington, DC 20460. Phone: 202–260–1993. E-mail: delehanty.robyn@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities: Although certain proposed clarifications to the UIC regulations would apply to owners or operators of any type of Class V well, the only entities to be regulated by this proposal when final are owners or operators of Class V motor vehicle waste disposal wells, industrial wells, and large-capacity cesspools. Potentially regulated categories and entities include:

Category	Examples of regulated entities (if they have a class V well)
Industry and Commerce	Gasoline service stations, new and used car dealers, any facility that does any vehicle repair work (e.g., body shops, transmission repair shops, and muffler repair shops), chemical manufacturers, dry cleaners, electric component manufacturers, small machine manufacturers, die and tool manufacturers, commercial printers, asphalt manufacturers, and carwashes where engine or undercarriage washing is performed and any other commercial or industrial facility with a Class V disposal or drainage well (other than stormwater drainage wells).
State and Local Government	Road facilities, fire stations, and solid waste management facilities.
Federal Government	Any Federal agency that owns or operates one of the above entities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your injection well is regulated by this action, you should carefully examine the applicability criteria in §§ 144.81 and 144.85 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Preamble Outline

I. Format and Scope of Proposed Rule
II. Background
A. Statutory and Regulatory Framework
B. Requirements Applicable to Class V Wells
C. History of this Rulemaking
1. 1987 Report to Congress on Class V Wells
2. 1994 Consent Decree With the Sierra Club
3. 1995 Proposed Rule
4. 1996 Amendments to the Safe Drinking Water Act
5. 1997 Consent Decree With the Sierra Club
6. 1998 Stakeholder Meetings and Small Entity Outreach
III. EPA Strategy for Class V Well Management
A. Initial Rule for High-Risk Well Types in Source Water Protection Areas

B. Further Study of Additional Class V Well Types
IV. Integration of the Class V Rule With the Source Water Assessment Program
A. Overview of the Source Water Assessment Program
B. Class V Rule Focus on Source Water Protection Areas
1. Proposal
2. Alternatives
C. Other Connections Between the Class V Rule and Source Water Assessment Program
V. Proposed Class V Well Requirements
A. Categories of Class V Wells
B. Requirements for Motor Vehicle Waste Disposal Wells
1. Proposal to Ban New and Existing Wells
2. Proposal to Ban New Wells and Require Existing Wells to Either Close or Get a Permit
3. Alternative
C. Requirements for Class V Industrial Wells
1. Proposal
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D. Ban of Large-Capacity Cesspools
E. Exclusion Criteria for Septic Systems and Cesspools
F. Other Amendments
1. Sections 144.3 and 146.3—Definitions
2. Sections 144.6 and 146.5—Classification of Wells
3. Existing Regulations Being Reiterated or Replaced in 40 CFR Part 144, Subpart G
4. Part 145—State UIC Program Requirements
VI. Regulatory Impact
A. Executive Order 12866
B. Children's Health Protection and Executive Order 13045
C. Paperwork Reduction Act
D. Regulatory Flexibility Act
E. Enhancing the Intergovernmental Partnership
F. Unfunded Mandates
G. National Technology Transfer and Advancement Act
H. Environmental Justice
I. Effect on States With Primacy

I. Format and Scope of Proposed Rule

Today's notice proposes to consolidate Class V UIC regulations in a new Subpart G to 40 CFR Part 144. This subpart is written in a simple-to-understand, plain-English format. Before reading the rest of this preamble, Class V well owners and operators should review the proposed new regulation that presents the enforceable legal requirements they need to know about. This preamble does not repeat any of the requirements contained in the proposed rule, but rather provides background and additional rationale not included in the regulation and solicits comments on alternative requirements.

Because the new Subpart G consolidates the Class V UIC regulations in one place, it includes portions of the existing regulations together with proposed new requirements. The existing regulations that are being reiterated in, or, in some cases, moved to Subpart G for the sake of clarity are not open for public comment. Instead, EPA is accepting public comment only on the proposed new requirements, which include (1) some of the minor revisions originally proposed in the August 28, 1995 notice, which are repeated today to provide a complete and coherent picture of all Class V changes being contemplated, and (2) additional requirements being proposed for the first time today. Table 1 below identifies those sections of the proposed regulation on which EPA is, and is not, accepting comment.

Today's proposal does not solicit comments on other minor amendments proposed on August 28, 1995 that have nothing to do with Class V wells. These are amendments to § 144.23 to clearly rule authorize Class IV wells used to inject treated water into the same formation from which it came if such injection is approved by EPA or a state as part of a remediation program, and to § 146.10 to include plugging and abandonment requirements for Class IV wells. At the same time EPA takes final action on today's proposal, EPA will issue a final ruling on these other amendments based on public comments received on the 1995 proposal.

TABLE 1.—SECTIONS OF PROPOSED REGULATION OPEN FOR PUBLIC COMMENT

Open for public comment		Not open for public comment
New requirements in today's proposal	Minor amendments proposed on August 28, 1995	Existing requirements included in plain English format
§ 144.1(f) reference to Subpart G, Part 144	§ 144.1(g) specific inclusions and exclusions	§ 144.80 description of the five classes of injection wells (reiterates existing § 144.6).
§§ 144.3 and 146.3 definition for sanitary waste.	§§ 144.3 and 146.3 definitions for cesspool, drywell, improved sinkhole, septic system, subsurface fluid distribution system, well, and well injection.	§ 144.82 (a) through (e) prohibition of fluid movement (reiterates existing § 144.12).
§§ 144.6(e) and 146.5(e) description of Class V injection wells.	§ 144.6(a)(3) and 146.5(a)(3) classification of radioactive waste disposal wells.	§ 144.83 inventory requirements for Class V wells (moved from § 144.26(b)(1)(iii) and (e)), except the proposed new inventory requirement for well conversions in § 144.83(a)(2)(iii), which is open for public comment.
§§ 144.81 definition of 12 types of Class V injection wells.		
§§ 144.83(a)(2)(iii) requirement to submit new inventory information if a well in a DI Program is converted to an industrial well.		
§§ 144.84(b)(2) and (b)(3) description of circumstances in which permits or other action is required.		§ 144.84 description of when Class V injection is authorized by rule (moved from existing § 144.24), except the circumstances in § 144.84(b)(2) and (b)(3) in which permits or other action is required for Class V cesspools, motor vehicle waste disposal wells, and industrial wells, which is open for public comment.
§ 144.85 description of when additional requirements apply to Class V cesspools, motor vehicle waste disposal wells, and industrial waste disposal wells.		

TABLE 1.—SECTIONS OF PROPOSED REGULATION OPEN FOR PUBLIC COMMENT—Continued

Open for public comment		Not open for public comment
New requirements in today's proposal	Minor amendments proposed on August 28, 1995	Existing requirements included in plain English format
§ 144.86 additional requirements for certain Class V cesspools, motor vehicle waste disposal wells, and industrial waste disposal wells.		
§ 144.87(a)(2) discussion of available alternatives for disposing of waste fluids.		§ 144.87(a)(1) closure requirements for Class V cesspools, motor vehicle waste disposal wells, and industrial waste disposal wells subject to § 144.86.

II. Background

A. Statutory and Regulatory Framework

Class V wells are regulated under the authority of Part C of the Safe Drinking Water Act (SDWA or the Act) (42 U.S.C. 300h *et seq.*). The SDWA is designed to protect the quality of drinking water in the United States, and Part C specifically mandates the regulation of underground injection of fluids through wells. The Agency has promulgated a series of underground injection control (UIC) regulations under this authority.

Section 1421 of the Act requires EPA to propose and promulgate regulations specifying minimum requirements for state programs to prevent underground injection that endangers drinking water sources. EPA promulgated administrative and permitting regulations, now codified in 40 CFR Parts 144 and 146, on May 19, 1980 (45 FR 33290), and technical requirements in 40 CFR Part 146 on June 24, 1980 (45 FR 42472). The regulations were subsequently amended on August 27, 1981 (46 FR 43156), February 3, 1982 (47 FR 4992), January 21, 1983 (48 FR 2938), April 1, 1983 (48 FR 14146), July 26, 1988 (53 FR 28118), December 3, 1993 (58 FR 63890), June 10, 1994 (59 FR 29958), December 14, 1994 (59 FR 64339), and June 29, 1995 (60 FR 33926).

Section 1422 of the Act provides that states may apply to EPA for primary responsibility to administer the UIC program (those states receiving such authority are referred to as ''Primacy States''). Where states do not seek this responsibility or fail to demonstrate that they meet EPA's minimum requirements, EPA is required to prescribe, by regulation, a UIC program for such states. These direct implementation (DI) programs were promulgated in two phases, on May 11, 1984 (49 FR 20138) and November 15, 1984 (49 FR 45308). For the remainder of this preamble, references to the UIC Program ''Director'' mean either the Director of the EPA program (where the program is implemented directly by EPA) or the Director of the Primacy State program (where the state is responsible for implementing the program). Also, currently all Class V UIC Programs in Indian Country are directly implemented by EPA. Therefore, for the remainder of this preamble, references to DI Programs include Class V programs in Indian Country.

B. Requirements Applicable to Class V Wells

The UIC regulations establish five classes of injection wells. Class I wells are used to inject hazardous and non-hazardous waste beneath the lowermost formation containing an underground source of drinking water (USDW) within one-quarter mile of the well bore. Class II wells are used to inject fluids associated with oil and natural gas recovery and storage of liquid hydrocarbons. Class III wells are used in connection with the solution mining of minerals. Class IV wells are used to inject hazardous or radioactive wastes into or above a formation that is within one-quarter mile of a USDW. (Class IV wells are generally prohibited by 40 CFR § 144.13.) Class V wells are defined in the regulations as any well not included in Classes I through IV.

Class V wells are currently authorized by rule (§ 144.24(a)). Well authorization expires upon the effective date of a permit issued pursuant to §§ 144.25, 144.31, 144.33, or 144.34, or upon proper closure of the well. The current regulations subject Class V wells to the general statutory and regulatory prohibitions against endangerment of USDWs, as well as some specific requirements. Under § 144.12(a), owners or operators of all injection wells, including Class V injection wells, are prohibited from engaging in any injection activity that allows the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect human health. Section 144.12 (c) and (d) prescribe mandatory and discretionary actions to be taken by the Director if a well is not in compliance with § 144.12(a). Specifically, the Director must choose between requiring the injector to apply for an individual permit, ordering such action as closure of the well to prevent endangerment, or taking an enforcement action.

Owners or operators of Class V injection wells must also submit basic inventory and assessment information under § 144.26. In addition, Class V wells are subject to the general program requirements of § 144.25 under which the Director may require a permit, if necessary, to protect USDWs. Moreover, under § 144.27, EPA may require owners or operators of any Class V well, in EPA-administered programs, to submit additional information deemed necessary to protect USDWs. Owners or operators who fail to submit the information required under §§ 144.26 and 144.27 are prohibited from using their injection wells.

C. History of This Rulemaking

While implementing the above requirements, EPA has inventoried and assessed Class V wells and has pursued new rulemaking activities and non-regulatory approaches to Class V well management. Major milestones during this process leading to today's proposal are summarized below.

1. 1987 Report to Congress on Class V Wells

In accordance with the 1986 Amendments to the SDWA, EPA summarized information on 32 categories of Class V wells in a Report to Congress entitled Class V Injection Wells—Current Inventory; Effects on Ground Water; and Technical Recommendations, September 1987 (EPA Document Number 570/9–87–006). This report presents a national overview of Class V injection practices and state recommendations for Class V design, construction, installation, and siting requirements. These state recommendations, however, did not give EPA a clear mandate on what, if any, additional measures were needed to control Class V wells on the national level. For any given type of well, the recommendations can vary broadly and are rarely made by more than two or three states. For example, the recommendations for septic systems range from further studies (3 states) to statewide ground water monitoring (1 state). For industrial waste water wells, some states recommend immediate action and closure while others recommend monitoring and ground water evaluation studies.

2. 1994 Consent Decree With the Sierra Club

On December 30, 1993, the Sierra Club filed a complaint against EPA in the United States District Court for the District of Columbia alleging that EPA failed to comply with section 1421 of the SDWA regarding publication of proposed and final regulations for Class V injection wells. In particular, the complaint alleged that EPA's current regulations regarding Class V wells do not meet the SDWA's statutory requirements to ''prevent underground injection which endangers drinking water sources.'' (Complaint, Paragraph 15)

On August 31, 1994, EPA entered into a consent decree with the Sierra Club which required that no later than August 15, 1995, the Administrator sign a notice to be published in the **Federal Register** proposing regulatory action that fully discharges the Administrator's rulemaking obligation under section 1421 of the SDWA, 42 U.S.C. 300h, with respect to Class V injection wells. In this notice, EPA had to (1) propose additional regulations with respect to all Class V injection wells, (2) propose a decision that no further rulemaking for these wells is necessary, or (3) propose additional regulations for some Class V injection wells and a decision that no further rulemaking is necessary for the remaining wells (Consent Decree, Paragraph 2). The consent decree further required that, no later than November 15, 1996, the Administrator sign a final rulemaking notice to be published in the **Federal Register** fully discharging the Administrator's rulemaking obligations under section 1421 with respect to Class V injection wells (Consent Decree, Paragraph 3).

3. 1995 Proposed Rule

On August 15, 1995, the Administrator signed a notice of proposed rulemaking intended to fulfill EPA's obligation under the 1994 consent decree with the Sierra Club (60 FR 44652, August 28, 1995). In this notice, EPA proposed not to adopt additional federal regulations for any types of Class V injection wells. Instead, the Agency proposed to address the risks posed by certain wells using existing authorities and a Class V management strategy designed to (1) speed up the closure of potentially endangering wells; and (2) promote the use of best management practices to ensure that other Class V wells of concern do not endanger USDWs. Several factors led EPA to propose this approach, including: (1) the wide diversity in the types of fluids being injected, ranging from high risk to not likely to endanger; (2) the large number of facilities to be regulated; and (3) the nature of the regulated community, which consists of a large proportion of small businesses.

EPA received many comments that supported the Agency's proposal to not impose more regulations for Class V wells. Commenters who supported the rule included some states and industries that use Class V injection wells. In general, these commenters supported the rule because it provided maximum flexibility to states to use existing authorities to address high-risk site specific factors. However, EPA also received a number of comments that raised concerns about the proposal, primarily from states and an environmental group. In particular, several commenters questioned whether a UIC program without additional requirements for what they believed to be relatively high-risk well types, including Class V industrial waste disposal wells and cesspools, could prevent endangerment to drinking water sources as required by the SDWA. These commenters claimed that at least some types of wells pose a known threat to USDWs and that lack of data or ability to address the entire threat posed by Class V wells does not justify failing to act to address at least part of the threat.

EPA now believes that the 1995 proposal was inadequate to protect USDWs for two main reasons. First, the 1995 approach proposed to address all Class V wells regardless of the level of risks they pose to USDWs, with one regulatory approach. Specifically the proposed approach did not provide a clear set of regulatory requirements for different categories of wells based on their level of risk. As a result, the proposed rule did not adequately address high-risk wells that threaten public drinking water supplies. EPA now believes that specific regulatory requirements are necessary to control the risks posed by industrial waste disposal wells, motor vehicle waste disposal wells, and large-capacity cesspools in delineated source water protection areas, as described below. This belief was echoed in some of the public comments received on the proposed rule and in recent stakeholder meetings. Second, EPA believes that the 1995 proposed rule did not provide for adequate public health protection nationwide. Specifically, it did not establish a clear baseline program for states to follow and, therefore, even though the authority exists, states could allow inadequate controls in those situations where there is inadequate information and/or inadequate resources to address Class V wells. On the other hand, it has been suggested that the additional information expected to be generated through the source water assessment program, including an inventory of sources of contamination and an assessment of the vulnerability of public water systems to such contamination could strengthen the 1995 approach. If commenters wish to submit comments on this issue they are welcome to do so.

4. 1996 Amendments to the Safe Drinking Water Act

The 1996 Amendments to the SDWA establish a new and flexible approach to drinking water protection. In particular the Amendments make source water protection a national priority. They create requirements and incentives for Primacy states to assess their own source waters, including the susceptibility of public water systems to contamination, and to encourage states to establish source water protection programs that fit their particular needs and conditions.

As discussed in more detail in section IV of today's preamble, EPA believes it is necessary to re-propose Class V UIC regulations that are integrated with these new programs for source water protection. For example, today's proposal focuses on source water protection areas, consistent with the national priority established by the 1996 SDWA Amendments. Today's proposal also would provide incentives for states to complete source water assessments in a timely manner, reinforcing other actions the Agency is taking to achieve the goal of enhanced protection of source waters.

5. 1997 Consent Decree With the Sierra Club

The Sierra Club Legal Defense Fund submitted comments on the 1995 proposed Class V rule alleging that the proposal failed to carry out statutory requirements. As noted above, based on these and other comments, EPA decided to reconsider its proposed approach. Because this reconsideration would extend the time necessary to complete the rulemaking for Class V wells, EPA and the Sierra Club entered into a modified consent decree on January 28, 1997 that extends the dates for rulemaking that had been in the 1994 decree. The modified decree requires three actions. First, by no later than July 18, 1998 (EPA used one of its 30 day extensions to the original June 18, 1998 deadline), the EPA Administrator must sign a notice to be published in the **Federal Register** proposing regulatory action that fully discharges the Administrator's rulemaking obligation under section 1421 of the SDWA with respect to those types of Class V injection wells presently determined to be high risk by the Administrator (based on the additional study described below, other types of Class V wells may be found to pose a high risk and warrant additional regulation later). This notice must either (1) propose regulations fully implementing section 1421 of the SDWA with respect to the types of Class V wells currently known to pose a high risk, (2) propose a decision that no further rulemaking is necessary in order to fully discharge the Administrator's rulemaking obligation with respect to such high-risk wells, or (3) propose regulations fully implementing section 1421 with respect to some of these high-risk Class V wells, and propose a decision that no further rulemaking is necessary in order to fully discharge the Administrator's rulemaking obligations with respect to the remaining high-risk Class V injection wells. According to the consent decree, the Administrator must sign a final rulemaking for high-risk Class V wells by no later than August 31, 1999. (Consent Decree, Paragraphs 2a and 2b). Today's proposal has been developed in response to this first required action and supersedes the 1995 proposal with respect to these high-risk wells.

Second, by no later than September 30, 1999, EPA must complete a study of all Class V wells not included in the rulemaking on high-risk Class V injection wells (Consent Decree, Paragraph 2c). Based on this study, EPA may find that some of these other types of Class V wells also pose a high risk.

Third, by no later than April 30, 2001, the EPA Administrator must sign a notice to be published in the **Federal Register** proposing to discharge the Administrator's rulemaking obligations under section 1421 of the SDWA with respect to all Class V injection wells not included in the rulemaking for currently identified high-risk Class V injection wells. That proposal will supersede the 1995 proposal with respect to all remaining Class V wells. The Administrator must sign a final rulemaking for these remaining Class V wells by no later than May 31, 2002.

6. 1998 Stakeholder Meetings and Small Entity Outreach

To help shape today's proposal, EPA convened three stakeholder meetings to inform potentially affected entities of the requirements under consideration and to solicit feedback. One meeting was in Washington, DC, on January 20, 1998, one was in Chicago, IL on January 27, 1998, and one was in San Francisco, CA on February 19, 1998.

As required by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA also has conducted outreach directly to representatives of small entities that would be affected by the proposed rule. In consultation with the Small Business Administration (SBA), EPA identified 17 representatives of small entities that were most likely to be affected by the proposal. In December, 1997, EPA prepared an outreach brochure titled ''Possible Changes to Class V UIC Requirements: Information for Owners and Operators of Class V Injection Wells'' (available for review in the public docket supporting today's notice). This brochure was distributed to the small entity representatives and EPA convened a two-hour conference call with these representatives on January 15, 1998. Also in January, 1998, EPA presented the new Class V requirements being considered to the SBA Environmental Roundtable.

Efforts to identify and incorporate small entity concerns into this rulemaking culminated with the convening of a Small Business Advocacy Review Panel, as required by SBREFA. This Panel was headed by EPA's Small Business Advocacy Chairperson with the Office of Policy, Planning and Evaluation, and consisted of the Director of the Office of Ground Water and Drinking Water within EPA's Office of Water, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel for Advocacy of the SBA. For a 60-day period starting in February 1998, the Panel reviewed technical background information related to this rulemaking, reviewed comments provided by small entity representatives, and met on several occasions with EPA and the small entity representatives to identify issues and explore alternative approaches for accomplishing environmental protection goals while minimizing impacts to small business. This process, along with the Panel's findings and recommendations, are presented in the April 1998 ''Report of the Small Business Advocacy Review Panel on the Revisions to the Underground Injection Control Regulations for Class V Injection Wells,'' available for review in the public docket supporting today's proposal.

Today's notice incorporates all of the recommendations on which the Panel reached consensus. In particular, the Panel recommended that the proposal offer alternatives to the proposed ban of Class V motor vehicle waste disposal wells. Therefore, in addition to the proposed ban, today's notice presents a co-proposal in both the preamble and proposed regulatory language, as well as another alternative that is discussed in the preamble only (see section V.B of the preamble and § 144.84(b) and § 144.86 of the proposed regulation). The Panel also recommended that UIC Program Directors be allowed to extend the time to comply with the new requirements from 90 days to up to a year in certain situations. This recommendation has been adopted in today's notice (see sections V.B and V.C of the preamble and § 144.85(a) and (I) and § 144.86 of the proposed regulation). Other changes made in response to Panel recommendations include the following: the proposed definitions of industrial wells and drainage wells have been revised to make sure wells intended for stormwater management are (subject to certain conditions) regulated as drainage wells not industrial wells (see section V.A of the preamble and § 144.81(b) and (e) of the proposed regulation); additional data and rationale have been added to the preamble to support EPA's belief that motor vehicle waste disposal wells in source water protection areas pose a high risk (see section V.B.1); the preamble discussion of regulatory impacts has been expanded to describe and solicit comments on the approach used to estimate the type and number of small entities potentially subject to the rule (see section VI.D); the proposed definitions of ''industrial'' and ''other industrial'' wells have been revised to clarify that wells injecting wastewater from carwashes qualify as industrial wells subject to the rule only if specifically set up for engine or undercarriage washing (see section V.A of the preamble and § 144.81(b) and (l) of the proposed regulation); the preamble has been revised to introduce a report submitted by the National Funeral Directors Association on funeral home septic systems and to request comments on the merits of moving such systems into the other industrial well category (see section V.A); the preamble has been expanded to clarify that Class V wells at motor vehicle service facilities may not be subject to the rule if motor vehicle waste fluids are prevented from entering the well (see section V.B.1); the preamble has been expanded to elaborate on the rationale for and ask for comment on the proposed statewide coverage of the new requirements in states that fail to complete their source water assessments by May 2003 (see section IV.B.1 and 2); the preamble and the supporting economic analysis have been revised to acknowledge and account for the cleanup requirements that may be triggered by the proposal to close certain Class V wells and to account for the likely overlap between areas where Class V wells are located and source water protection areas (see section V.B.1); the proposed regulatory language has been expanded to identify ways well owners or operators can learn if they are in a source water protection area (see § 144.85(g)); and the preamble has been expanded to explain the rationale for and ask for comment on proposing monitoring requirements for motor vehicle waste disposal wells but not industrial wells (see section V.B.3).

The Panel did not reach consensus on two issues. One issue concerned the basis for regulation, with some Panel members questioning whether EPA had an adequate basis to conclude that the non-regulatory approach proposed in 1995 was inadequate. In response to this issue, today's preamble includes additional discussion explaining why EPA now believes the 1995 proposal is inadequate and why the proposed new regulations are necessary (see section II.C.3).

The other issue concerned the proposed requirement for industrial well injectate to meet MCLs at the point of injection, with some Panel members suggesting the EPA consider the possibility of allowing the injectate to meet some higher multiple of the MCL (e.g., 10 or 100 times the MCL) for certain contaminants under certain conditions, in recognition of the fact that some contaminants are significantly attenuated by percolation through soil prior to reaching the water table, and most are diluted within the aquifer prior to reaching a public water system. There are several research reports in the docket which discuss the question of attenuation of volatile organic compounds and metals in the soil, under various conditions. In addition, many existing wells are designed in accordance with state and local requirements to treat wastes before releasing them into the soil. These Panel members suggested that for such contaminants (e.g., metals, which generally do not travel far from the point of injection unless injected directly into the water table) EPA should try to identify conditions (e.g., soil type, water table depth, distance to nearest drinking water well) that would allow injection of the contaminants without endangering drinking water sources. In making this suggestion they noted that to be workable, such conditions would have to be easily verifiable. They also suggested that EPA consider expanding the flexibility available under the permitting option for motor vehicle wells to allow UIC Program Directors to permit discharges that exceed an MCL at the point of injection if this would not endanger USDWs, based on site specific circumstances.

EPA believes that its proposed approach to regulate cesspools, automotive service station wells and industrial wells is consistent with its long-standing interpretation of the statutory requirements to assure the protection of underground sources of drinking water. EPA also believes that developing a set of conditions within which a Class V well owner or operator could inject waste that exceeds drinking water standards without endangering drinking water sources would not be a viable option for most small entities because of the difficulty and expense involved in collecting the site-specific hydrologic, geologic, and soil information necessary to determine if waste, above the MCL, could be injected without endangering the underlying USDW. Additionally, EPA questions whether it would be possible to develop such conditions because of the difficulty of anticipating certain events (such as high volume spills, illicit discharges, the siting of new drinking water supplies wells, and improper system maintenance) that could endanger underlying USDWs.

However, EPA is requesting comment on its position. Some commenters have suggested that there are situations where a facility could inject waste that exceeds some MCLs in source water protection areas without endangering drinking water supplies. EPA believes these situations are extremely rare and that, if allowed to inject above the MCL, the vast majority of facilities would pose an endangerment to current and future water supplies. EPA's proposed regulatory approach to require facilities to meet MCLs is designed to be protective of public health. Commenters are welcome to submit their views on whether or not they agree with EPA's position. If commenters disagree with EPA's position they should discuss specific contaminants and conditions for which an alternative regulatory approach would be appropriate and provide data supporting their position.

III. EPA Strategy for Class V Well Management

Today EPA is proposing an expanded Class V well management strategy to resolve major issues raised in public comments on the 1995 proposal, to embrace priorities and help achieve goals defined under the 1996 Amendments to the SDWA, and to fulfill the first phase of the Agency's requirements under the 1997 consent decree with the Sierra Club.

As discussed in section II.B above, Class V wells are currently authorized by rule as long as (1) they do not endanger USDWs, and (2) the well owners or operators submit basic inventory and assessment information. If a Class V well may endanger USDWs, UIC Program Directors can require the injector to apply for a permit, order preventive actions (including closure of the well) to prevent the violation, require remediation to assure USDWs are protected, or take enforcement action. These, and other existing, federal requirements and authorities will continue as basic elements of EPA's Class V strategy, applicable to all Class V wells in all areas.

Consistent with the 1997 decree, EPA is taking a step-wise approach to supplement the existing program and ensure Class V injection wells do not endanger USDWs. This approach consists of (1) an initial rule creating additional requirements for high-risk Class V well types in ground water-based source water protection areas; and (2) further study of other types of Class V wells not covered in the initial rule to provide the factual basis for further regulatory action, as necessary.

A. Initial Rule for High-Risk Well Types in Source Water Protection Areas

As the first step of its Class V strategy, EPA is today proposing to add requirements for three categories of Class V injection wells determined to be the highest risk by the Administrator. The three categories are: (1) motor vehicle waste disposal wells, (2) industrial wells, and (3) large-capacity cesspools, when any of these wells are located in source water protection areas delineated for community water systems and non-transient non-community water systems that use ground water as a source.[1] Source water protection areas, to be defined by states in accordance with the 1996 Amendments to the SDWA, will identify places critical for the protection of most public drinking water supplies.

In such delineated areas, today's proposal would ban new Class V motor vehicle waste disposal wells, as well as new cesspools having the capacity to serve 20 persons or more per day. Existing Class V motor vehicle waste disposal wells in delineated areas would either be banned or required to get a permit specifying that released fluids must meet primary drinking water maximum contaminant levels (MCLs) at the point of injection. Existing large-capacity cesspools in delineated areas would have to be phased out within five years. Owners or operators of Class V industrial wells in delineated areas would either have to close their wells or make sure the fluids they inject meet the MCLs at the point of injection.

As discussed later in this preamble, the conclusion that these Class V wells pose a high risk when located in ground water-based source water protection areas is based on substantial information and the combined professional judgment of EPA and state geologists and engineers that are responsible for implementing the Class V UIC program. EPA requests comment on this position. Specifically, do commenters believe that it is appropriate to designate motor vehicle and industrial wells in delineated areas as high risk and regulate them under this proposal or, alternatively, do commenters believe that there is a better (i.e., more or less inclusive) categorization that EPA could use to identify high risk wells? Commenters are encouraged to provide data supporting their position.

Available information presented in the Report to Congress and summarized in the 1995 proposal also suggests that there may be other categories of Class V wells that pose a high risk. Individual wells in any of the Class V categories also may endanger USDWs, depending on fluids released into the wells and site-specific conditions. However, available data regarding the risks posed by other Class V wells are insufficient for EPA to conclude that additional federal regulation is necessary at this time. Therefore, as the second step of the Class V strategy, EPA will continue to study all of the categories of Class V wells not addressed in today's proposal to determine the need for additional regulations. In the meantime, EPA will continue to rule authorize the other categories of Class V wells and actively control them by implementing and enforcing the existing regulations. This will include enforcing the § 144.12 prohibition against the endangerment of USDWs, calling individual problem wells in for a permit under § 144.25 authority, and requiring the submittal of additional information deemed necessary to protect USDWs in accordance with § 144.27.

At the same time, EPA expects and strongly encourages states to use existing UIC authorities to ensure all Class V wells are not endangering USDWs. These efforts should not be limited to wells in source water protection areas, which have received national priority under this regulation. There may be other sensitive areas, outside of delineated source water protection areas, that warrant more stringent control on a state or local level. Nothing in this rule precludes a state or local government from promulgating more stringent requirements above and beyond existing UIC authorities.

B. Further Study of Additional Class V Well Types

The second step in the strategy will involve continuing study to assess the size and impact of the Class V well universe not addressed by today's proposal. Other types of Class V wells are not covered by today's proposal because more information is needed to determine whether additional federal regulation for these other well types is necessary, and if so, what that additional regulation should entail. Therefore, EPA will undertake further study to assess risks, fill existing information gaps, and provide a factual basis for any further regulatory action.

IV. Integration of the Class V Rule With the Source Water Assessment Program

Today's proposal has been developed to productively use and promote linkages between the Class V UIC program and EPA's developing source water assessment program. Both programs are authorized by the SDWA. The UIC Program is designed to protect all current and potential USDWs from pollution by injection wells. The source water assessment program is structured to identify all potential sources of contamination within areas that now provide short-term recharge to public water supply wells and surface water intakes.

A. Overview of the Source Water Assessment Program

Section 1453 of the SDWA Amendments of 1996 (Pub. L. 104–182) establishes a new requirement for source water assessments. EPA published guidance describing how the states should carry out a source water assessment program within the state's boundaries. The final guidance, entitled State Source Water Assessment and Protection Programs Guidance (EPA 816–R–97–009), was released in August 1997 and is available in the docket for today's proposal.

Source water assessment programs comprise essentially the first three steps of a full prevention program. First, a program must delineate the boundaries of the assessment areas in the state from which one or more public drinking water systems receive supplies of drinking water. In delineating these areas, states must use ''all reasonably available hydrogeologic information on the sources of the supply of drinking water in the state and the water flow, recharge, and discharge and any other reliable information as the state deems necessary to adequately determine such areas.'' Second, the state must identify contaminants of concern, and for those contaminants, the state must inventory significant potential sources of contamination in delineated source water protection areas. Third, the state must ''determine the susceptibility of the public water systems in the delineated area to such contaminants.''

States must submit their proposed source water assessment programs to EPA no later than 18 months after publication of the Source Water Assessment and Protection Programs Guidance, which would be February 1999. EPA then has nine months, until November 1999, to approve or disapprove the submitted state program. Once approved, a state should complete its source water assessments by no later than November 2001, or if EPA grants an extension, by May 2003. For purposes of this proposed rule, a state program is considered complete when the state program has been approved by EPA and all its local assessments for community and non-transient non-community water systems have been completed. This means that all local assessments within a state have

[1] As defined in the drinking water regulations at 40 CFR 141.2, a ''community water system'' is a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. A ''non-transient non-community water system'' is a public water system that is not a community water system and that regularly serves at least 25 of the same people over six months a year. Non-transient non-community water systems may include systems that provide water to day care centers, government/military installations, manufacturers, hospitals or nursing homes, office buildings, schools, and other facilities. A ''transient non-community water system'' provides a less regular source of water, such as to people visiting rest areas and campgrounds.

performed the three required steps of delineation, source identification, and susceptibility analysis. This proposed rule does not regulate wells within the source water protection areas for transient non-community water systems. Therefore, for purposes of this proposed rule, assessments for these systems do not have to be performed for the state program to be considered complete.

Other features of the program include the new section 1452 grant program, which established the Drinking Water State Revolving Fund. Grants under section 1452 may be used to assist the states in financing the source water assessment program and most states have elected to use the grants for this purpose. In addition, connections between the source water assessment program and relief from the contaminant monitoring requirements of the SDWA provide an incentive for states to complete implementation of the source water assessment program within a relatively short (two-year) timetable. For a state to tailor alternative monitoring requirements for public water systems under a new permanent monitoring relief provision contained in the 1996 Amendments, a state must have an EPA-approved source water assessment program. Moreover, any public water system seeking alternative monitoring requirements under a state's permanent monitoring relief authority must have a complete source water assessment.

Section 1453 expresses Congress' intent that states use data generated under other programs. To avoid duplication and encourage efficiency, the source water protection area delineation and source identifications are specifically encouraged to make use of any of the following: vulnerability assessments, sanitary surveys, and monitoring programs; delineations or assessments of ground water sources under a state wellhead protection program; delineations or assessments of surface or ground water sources under a state pesticide management plan; delineations or assessments of surface water sources under a state watershed initiative or to satisfy the watershed criterion for determining if filtering is required under the Surface Water Treatment Rule; and delineations or assessments of surface or ground water sources under programs or plans pursuant to the Federal Water Pollution Control Act.

B. Class V Rule Focus on Source Water Protection Areas

1. Proposal

Today's proposal focuses on source water protection areas as a key element for the protection of USDWs. Areas delineated under a state source water assessment program represent, at a minimum, areas designated to receive top priority for the protection of public drinking water supplies. Consistent with this prioritization, this rule would target the high-risk Class V wells in delineated source water protection areas for public water systems that use ground water as a source.

Figure 1 shows how the proposed Class V rule would be linked with the source water assessment program in terms of major milestones and areas covered. According to the 1997 consent decree with the Sierra Club (as modified), the new Class V requirements would be finalized by August 1999. The requirements would then become effective in DI Programs within 60 days, or by October 1999. Primacy States would have 270 days, or until May 2000, to submit for EPA's approval any program revisions needed to implement the new requirements. Assuming it takes three months for EPA to approve these revisions, the new requirements would become effective in Primacy States by August 2000. If the source water assessment program in a state is complete by the effective date of the rule (either October 1999 for DI Programs or around August 2000 for Primacy States), the new requirements would apply only to delineated source water protection areas. If some but not all local assessments in a state have been completed by that time, meaning that the state program is not complete, then the new requirements would apply to delineated areas where local assessments are complete. If all local assessments are not done by May 2003, which is the time by which state programs should be complete according to the State Source Water Assessment and Protection Programs Guidance, the new Class V requirements would apply statewide because there would be no way of knowing which wells in the state pose the highest risk. A possible exception would be if a state completed local source water assessments in one geographic area, the state would know which wells within that specific geographic area pose the highest risk.

The requirements would apply statewide permanently, even if a state completed its source water assessment program at some later time after May 2003. EPA realizes that some commenters may think that it is unreasonable, unfair, or unnecessary to permanently apply the new requirements statewide if a state's source water assessment program is not complete by May 2003, but is completed some time later. However, EPA believes this is the best approach for two reasons. First, this approach would provide a strong incentive for states to establish and complete a source water assessment program in a timely manner, consistent with the goal under the 1996 SDWA Amendments. Second, applying the requirements statewide starting in May 2003 and then changing to apply the requirements only to delineated areas when programs are completed some time afterward would be very confusing and difficult to implement, both for well owners or operators and for UIC regulatory agencies. EPA believes this confusion and difficulty would ultimately result in the new requirements not being implemented effectively to ensure the protection of USDWs. The next section of this preamble on alternatives provides further discussion of a permanent statewide ban and possible alternative approaches. It should be noted, however, that with the exception of Wyoming and Indian Country as discussed below, EPA fully expects states to meet the deadline because the ground water component of source water assessment programs is likely to be based on the Wellhead Protection Programs already established in most states. Therefore, the point is expected to be moot in most places.

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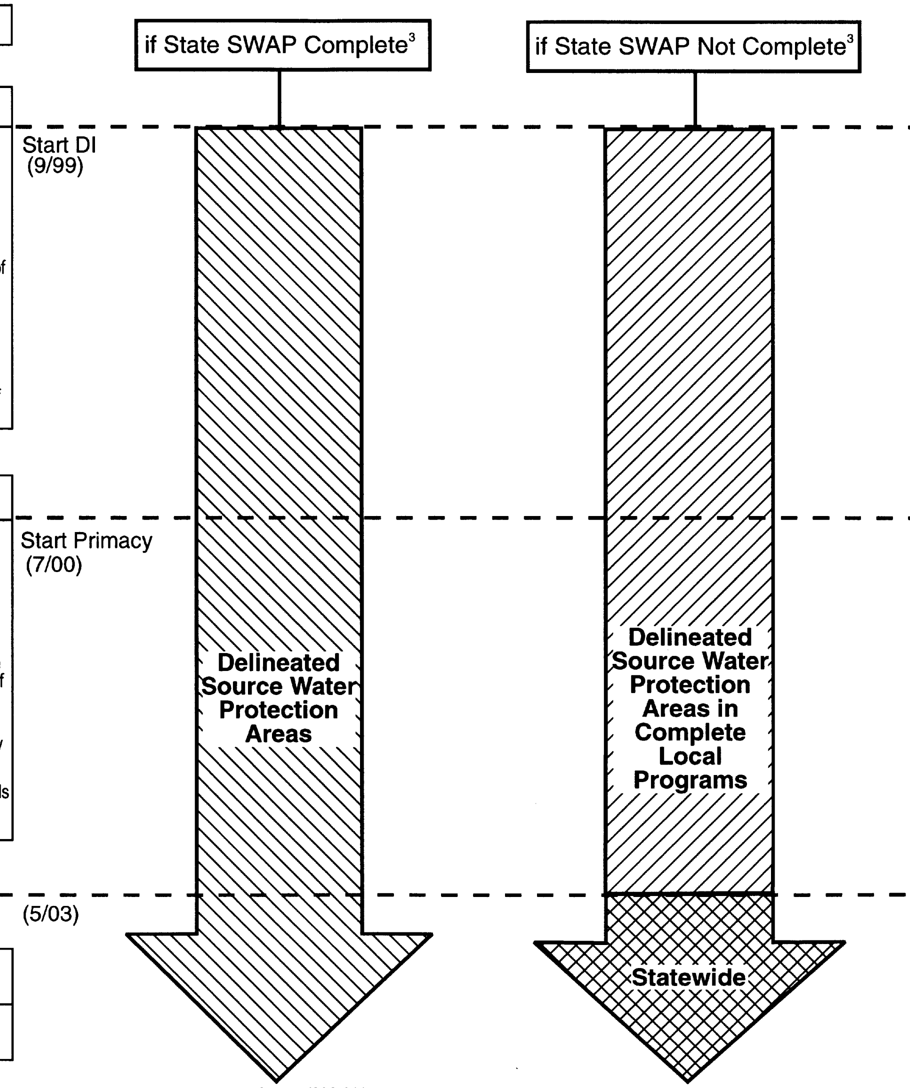
Figure 1: Joint Timeline for the Source Water Assessment Program and the Proposed Class V Rule

Source Water Milestones	Date	Class V Milestones
Publication of EPA guidelines[1]	August 1997	
	June 1998	Rule proposed
States submit program for EPA approval	February 1999	
	August 1999	Rule finalized
	October 1999	Rule effective in EPA Direct Implementation (DI) programs New large-capacity cesspools and motor vehicle waste disposal wells in DI programs prohibited In DI programs, existing motor vehicle waste disposal wells must, within 90 days of completion of local SWAP[2], either close or get a permit requiring that they meet MCLs New or converted industrial wells in DI programs subject to MCLs In DI programs, existing industrial wells must close or meet MCLs within 90 days of completion of local SWAP[2]
EPA approves or disapproves of State program	November 1999	
	May 2000	Primacy programs submit program revisions for EPA approval
	August 2000	Rule effective in Primacy programs (assuming it takes EPA 3 months to approve program revisions) New large-capacity cesspools and motor vehicle waste disposal wells in Primacy programs prohibited In Primacy programs, existing motor vehicle waste disposal wells must, within 90 days of completion of local SWAP,[2] either close or get a permit requiring that they meet MCLs New or converted industrial wells in Primacy programs subject to MCLs In Primacy programs, existing industrial wells must close or meet MCLs within 90 days of completion of local SWAP[2]
States complete SWAP, if no extension granted by EPA	November 2001	
States complete SWAP, if extension granted by EPA	May 2003	
	September 2004	Existing large-capacity cesspools in DI programs must close
	July 2005	Existing large-capacity cesspools in Primacy programs must close

Areas Where the Class V Rule Would Apply



[1] The State Source Water Assessment and Protection Programs Guidance (EPA 816-R-97-009) is available through the EPA Office of Water Resource Center (202-260-7786).
[2] The UIC Program Director would be allowed to extend this deadline for up to one year in situations where the most efficient compliance option is connection to a sanitary sewer or installation of new treatment technology.
[3] Source Water Assessment Program (SWAP) = Delineation + source identification + susceptibility analysis. A State SWAP is complete when all local SWAPs are complete.

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The situation is more complicated in Wyoming and Indian Country because the State of Wyoming and Tribes do not have primacy for the public water system program and, as such, are not required to conduct source water assessments. Therefore, the proposed Class V UIC requirements would apply throughout Wyoming and Indian Country unless the EPA Regional Offices worked with the State and Tribes to delineate source water protection areas and implement other source water assessment activities. Alternatively, EPA's Source Water Guidance recommends that each Tribe implement a source water assessment program ''to the extent appropriate resources are available to do so.'' Tribes may either establish and implement their own program and submit it to EPA for approval, or they may participate in a state program as an alternative to, or in conjunction with, their own program. It is uncertain, however, which Tribes are likely to participate in source water assessment activities and to what extent.

States must delineate source water protection areas for: (1) Public water systems based solely on ground water; (2) public water systems based solely on surface water; and (3) public water systems using both ground and surface water, or systems using ground water that is influenced by surface water. In addition, states must delineate source water protection areas for: (1) Community water systems; (2) non-transient non-community water systems; and (3) transient non-community water systems. The requirements in today's proposal would apply to Class V cesspools, motor vehicle waste disposal wells, and industrial wells in source water protection areas delineated for community water systems and non-transient non-community water systems that use ground water as a source. For the purpose of today's proposal, this would include such systems that have at least one ground-water source that contributes to their annual water supply.

This focus on ground water, rather than surface water, is consistent with the scope of the UIC program to protect underground sources of drinking water. Moreover, based on EPA's most recent Community Water System Survey (EPA 815–R–97–001a, January 1997, page 6), almost 80 percent of community water systems use primarily ground water. Less than 10 percent of systems surveyed primarily use surface water sources.

EPA believes the focus on community water systems and non-transient non-community systems is justified based on the risks involved and the purpose of this rule. According to the most recent survey, community systems and non-transient non-community systems supply drinking water to 93 percent and 2 percent of the U.S. population, respectively (Community Water System Survey, EPA 815–R–97–001a, January 1997, page 5). In addition, the people relying on transient non-community water systems, such as at rest areas or campgrounds, do not drink water from the same system on a regular basis. Any exposure to contamination in a given system, therefore, tends to be one time or infrequent, as opposed to the chronic exposure and potentially significant risk associated with the consumption of contaminated water from community systems and non-transient non-community systems. Since most of the contaminants found in wells covered by today's proposal pose chronic, not acute risks, it would take repeated exposure to these contaminants for adverse health effects to be realized. Repeat exposure does not occur in transient systems. The purpose of today's rule is to address designated high-risk wells for which additional information is unnecessary. Given the limited exposure at transient systems, EPA does not believe that wells within delineated areas for such systems are categorically ''high risk'' and thus they are not part of today's rule.

The Agency recognizes, however, that there may be instances in which pathogens in untreated sanitary waste released into Class V cesspools could contaminate the water supply source for a transient system and pose an ''acute'' risk if consumed (meaning there could be a serious health risk given the nature and high level of contamination, despite the fact that the water is not regularly consumed). This would be a concern only if a Class V cesspool were in a location and hydrogeologic setting that would permit pathogens to migrate to a ground water supply well that serves a transient system, and then, only if there were no (or inadequate) disinfection of the water prior to it being consumed. EPA believes these circumstances are in fact limited because of the small number of large capacity cesspools that still exist. Nevertheless, to further limit the acute risk associated with large-capacity cesspools, EPA could expand today's proposed cesspool requirements to source water protection areas delineated for transient non-community systems that use ground water as a source, in addition to such areas for community water systems and non-transient non-community water systems. EPA requests comment on the merits and potential impacts of including transient systems within the scope of the proposed requirements for cesspools. Based on such comment, EPA may adopt that approach in the final rule.

EPA underscores that this initial rule targets certain source water protection areas for the purpose of prioritizing national policy. The rule does not establish differential levels of protection for different areas, but rather proposes specific measures EPA believes are necessary to ensure that high risk Class V wells do not endanger USDWs in the highest priority areas. The prohibition against endangerment of USDWs, found in § 144.12 of the existing UIC regulations, would continue to apply to all Class V wells and all areas, whether or not a state has a completed source water assessment program. Section 144.12(a) in particular provides that no injection-related activity may be conducted ''in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may otherwise adversely affect the health of persons.'' Similarly, § 144.12(c) and (d) authorize a variety of actions if a Class V well may cause a violation of primary drinking water regulations or otherwise adversely affect the health of persons.

In addition to § 144.12, other existing UIC authorities would continue to be available to control Class V wells on a case-by-case basis, as needed to protect USDWs in any area. These can include requiring a permit under §§ 144.25 and/or requiring submission of additional inventory information under § 144.26. In states with EPA-administered programs, the inventory requirements under § 144.26 can be supplemented by additional information requirements, including ground water monitoring, analysis of injected fluids, or submission of geologic information under § 144.27.

EPA expects and strongly encourages states to use these existing authorities to take whatever measures are needed to ensure Class V wells are not endangering USDWs in any other sensitive areas beyond delineated source water protection areas. Examples of other sensitive areas include areas overlying sole-source aquifers, highly productive aquifers supplying private wells, continuous and highly productive aquifers at points distant from public water supply wells, areas where water supply aquifers are recharged, karst aquifers that discharge to surface reservoirs serving as public water supplies, susceptible or sensitive hydrogeologic settings (e.g., glacial outwash deposits, eolian sands, and fractured volcanic rock), and areas of special concern selected based on a combination of factors, such as hydrogeologic sensitivity, prevailing land-use practices, and documented ground water contamination. If believed to be necessary, states should apply the same requirements proposed in this rule to these and other areas and/or to other Class V wells. Nothing in this rule precludes a state or local government from promulgating more stringent requirements above and beyond the existing UIC authorities.

2. Alternatives

The Agency requests public comments on whether the new Class V regulations should apply to areas beyond delineated source water protection areas, or even apply statewide, in order to ensure protection of USDWs in other locations. Although the Agency recognizes the merits of this approach, it is not preferred because it would uniformly impose stringent new requirements for motor vehicle waste disposal wells, large-capacity cesspools, and industrial wells in all areas even though such requirements may not be needed to protect USDWs in all cases. EPA notes that states are already required to take appropriate actions to prevent endangerment of USDWs from Class V UIC wells in any part of the state where such endangerment may occur. In fact, the Agency strongly encourages states to take appropriate action using existing authorities to control Class V wells in other areas. Finally, the proposed requirements would apply statewide if a state does not have a complete source water assessment program by May 2003. This would ensure adequate protection in all areas when a state has not studied and defined areas that warrant the greatest protection.

EPA also requests comments on the merits of broadening the scope of the additional requirements to other kinds of delineated source water protection areas. This could include areas delineated around public water systems using surface water recharged by ground water, or transient non-community water systems that depend on at least one ground-water source. As discussed above, EPA does not believe these options are needed in this first phase of the Class V UIC rulemaking.

EPA also requests that commenters provide suggestions and ideas for alternatives to permanently applying the new requirements statewide if a state's source water assessment program is not complete by May 2003. Several commenters during the SBREFA process believed this proposed approach would unfairly impose a burden on some injection well owners or operators, who are not endangering drinking water supplies, because of a state's failure to comply with applicable deadlines. In order for any alternative to be viable, it would have to be effective in accomplishing the overall objective of protecting USDWs. Certain advantages of the proposed approach include: the fact that it ensures protection in the event new public water supply systems are created outside areas currently delineated, and it provides a strong incentive for timely completion of source water assessment programs. Nevertheless, EPA recognizes there may be other approaches. One alternative could be to give UIC Program Directors the flexibility to extend the statewide ban date beyond May 2003 if states submit, before that time, a plan demonstrating that their source water assessment program is ''substantially'' (e.g., 80 to 90 percent) complete and showing how they are making steady progress toward completion. This approach, however, would not necessarily buy time for Wyoming or Tribes, which do not have primacy responsibility for conducting source water assessment programs and may not delineate their source water protection areas. EPA requests comments on the merits of this alternative and any other equally protective alternatives.

C. Other Connections Between the Class V Rule and Source Water Assessment Program

The proposed Class V rule and state source water assessment programs will have at least two other potentially beneficial mutual connections. First, as states carry out the source identification and susceptibility analysis required as the second and third steps of the source water assessment program, Class V well inventories and hydrogeological information developed under authorities such as § 144.27 will provide substantial inputs into the source water assessment programs of some states. The Class V program will provide an important means of both identifying and controlling risks in the delineated source water protection areas.

Second, grants under section 1452, which established the Drinking Water State Revolving Fund mentioned above, may also be used to finance a range of state activities related to public supplies of drinking water. A state may use up to 10 percent of its allotment for grants under § 1452 (with a 1:1 dollar state match) to support its state drinking water program, and to develop and implement a source water protection program, a capacity development program, and an operator certification program. These funds can be used for state activities under the UIC program to manage Class V wells, which may be in wellhead protection areas of public water supplies. In addition, up to 15 percent of the capitalization grant is available for local assistance and certain other eligible activities described in the SDWA, including delineation and assessment of source water protection areas (provided that each activity separately receives no more than 10 percent of the grant amount). The total amount appropriated for the Drinking Water State Revolving Fund Program for fiscal years 1997 and 1998 is $2.0 billion.

V. Proposed Class V Well Requirements

A. Categories of Class V Wells

Class V injection wells are generally shallow waste disposal wells, stormwater and agricultural drainage systems, or other devices used to release fluids either directly into USDWs or into the shallow subsurface that overlies USDWs. In some instances, the fluids released by these wells contain elevated concentrations of contaminants that may endanger drinking water supplies. EPA estimates that more than one million Class V wells currently exist in the United States. These wells are located in virtually every state, especially in unsewered areas where the population is likely to depend on ground water. Frequently, Class V wells are designed as no more than shallow holes or septic tank and leachfield combinations intended for sanitary waste disposal. While such designs may be adequate for the treatment of sanitary waste, they may not be appropriate for the disposal of industrial waste or other fluids, although they are sometimes used for this purpose. Some types of Class V wells may include other types of treatment systems, such as oil water separation tanks, which are designed to treat certain types of industrial waste.

Today, EPA is proposing to retain the current definition of Class V wells. However, the current regulations also contain a non-inclusive list of 16 types of Class V wells (§ 146.5). This list was further divided into 32 categories in the 1987 Report to Congress on Class V wells. The Report to Congress drew distinctions between well types based on the design of the well, in some instances, and on the types of fluids injected, in others. In reviewing the Report to Congress, the Agency has determined that some of these distinctions are of little consequence as far as the risk posed by the wells and the appropriate management scheme. Therefore, for today's proposal, the Agency has grouped Class V wells in 12 more appropriate categories that combine together wells that are mostly similar both in terms of the nature of fluids they inject and their potential to endanger USDWs.

The 12 general categories of Class V wells are defined in § 144.81 of today's proposed regulation. Table 2 shows how these categories relate to the listing of wells in § 146.5(e) of the current regulations and the Class V well types addressed in EPA's 1987 Report to Congress.

There are two major differences between the categories proposed today and the ones proposed in 1995: motor vehicle waste disposal wells and ''other industrial'' wells have been removed from the industrial well category proposed before and separated into their own categories. This makes it easier to tailor Class V regulations to the different types of wells based on their relative risk potential. In particular, motor vehicle waste disposal wells would be defined more precisely for the purpose of targeting additional requirements for this category of wells. In addition, carving out the other industrial wells creates a smaller and less diverse category of Class V industrial wells than defined in the August 28, 1995 proposal. The wells remaining in the industrial category in today's proposal—including wells at carwashes where engine or undercarriage washing is performed, industrial process water and waste disposal wells, and industrial drainage wells—are more likely to pose a high risk and are more amenable to control through one national minimum requirement than the broader category proposed before. Insufficient information is presently available to conclude that the other industrial wells should be banned, as EPA is proposing for motor vehicle waste disposal wells, or should be required to meet a standard on injectate quality, as EPA is proposing for Class V industrial wells. Instead, EPA proposes to enforce the general non-endangerment provisions in § 144.12 for other industrial wells and, if necessary to protect USDWs, require owners or operators to submit specific information under § 144.27 or obtain a permit under § 144.25. Under the second step of EPA's Class V strategy discussed above, EPA also will study the other industrial wells further and address them in another regulatory action, if necessary based on the findings of that study.

TABLE 2.—CATEGORIES OF CLASS V INJECTION WELLS

Category in today's proposal	Injection wells in category	Current § 146.5	Corresponding injection wells in 1987 report to Congress
Beneficial Use (§ 144.81(f)).	Aquifer recharge	(e)(6)	5R21 (Aquifer Recharge).
	Salt water intrusion barrier	(e)(7)	5B22 (Saline Water Intrusion Barrier).
	Subsidence control	(e)(10)	5S23 (Subsidence Control).
	Aquifer storage and recovery	Not listed	Not addressed as separate category.
	Subsurface environmental remediation	(e)(6)	5X26 (Aquifer Remediation Related).
Fluid Return (§ 144.81(g)).	Wells used to inject spent brines after the extraction of minerals from produced fluids.	(e)(14)	5X16 (Spent-brine Return Flow).
	Wells used to inject heat pump return fluids	(e)(1)	5A7 (Heat Pump/Air Conditioning Return Flow), 5A6 (Direct Heat Return).
	Wells used to inject fluids that have undergone chemical alteration during the production of geothermal energy for heating, aquaculture, or production of electric power.	(e)(12)	5A5 (Electric Power Return), 5A8 (Ground Water Aquaculture Return Flow).
Sewage Treatment Effluent (§ 144.81(h)).	Wells used to inject treated effluent from POTWs, or privately owned treatment works receiving solely sanitary waste.	Not listed	5W12 (Domestic Wastewater Treatment Plant Effluent Disposal).
Cesspools (§ 144.81(c))	Cesspools having the capacity to serve 20 persons or more per day and used solely for the subsurface emplacement of sanitary waste.	(e)(2)	5W9 (Untreated Sewage Waste Disposal), 5W10 (Cesspools).
Septic Systems (§ 144.81(d)).	Septic tank and fluid distribution system having the capacity to serve 20 persons or more per day and used solely for the subsurface emplacement of sanitary waste.	(e)(9)	5W11 (Septic Systems—Undifferentiated Disposal), 5W32 (Septic Systems—Drainfield Disposal), 5W31 (Septic Systems—Well Disposal).
Experimental Technology (§ 144.81(l)).	Wells used as part of unproven subsurface injection technologies other than waste disposal.	(e)(15)	5X25 (Experimental Technology).
Drainage (§ 144.81(e))	Wells used to drain surface and subsurface fluids, including agricultural drainage and stormwater runoff that may have the potential to receive insignificant amounts of waste due to small volume leaks, drips, or spills.	(e)(4)	5D2 (Stormwater Drainage), 5F1 (Agricultural Drainage), 5D3 (Improved Sinkholes), 5G30 (Special Drainage), 5X29 (Abandoned Drinking Water Wells, if used for the subsurface emplacement of stormwater).
Mine Backfill and Drainage (§ 144.81(j)).	Wells used to inject materials into mined out portions of subsurface mines, whether what is injected is a radioactive waste or not, including (1) slurries of sand, gravel, cement, mill tailings/refuse, fly ash, or other solids, and (2) mine drainage.	(e)(8)	5X13 (Mining, Sand, or Other Backfill).
In Situ and Solution Mining (§ 144.81(k)).	Wells used to inject fluids for the purpose of producing minerals or energy, which are not Class II or III wells.	(e)(13), (e)(16)	5X14 (Solution Mining), 5X15 (In situ Fossil Fuel Recovery).

TABLE 2.—CATEGORIES OF CLASS V INJECTION WELLS—Continued

Category in today's proposal	Injection wells in category	Current § 146.5	Corresponding injection wells in 1987 report to Congress
Motor Vehicle Waste Disposal (§ 144.81(a)).	Wells used to inject fluids from motor vehicle repair or maintenance activities, such as an auto body repair shop, automotive repair shop, car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work.	(e)(5)	5X28 (Automobile Service Station Disposal).
Other Industrial (§ 144.81(l)).	Wells used to inject fluids from carwashes where no engine or undercarriage washing is performed.	(e)(5)	Not addressed as separate category.
	Wells used to inject noncontact cooling water that contains no additives and has not been chemically altered.	(e)(3)	5A19 (Cooling water return flow).
	Wells used to inject fluids from laundromats where no onsite dry cleaning is performed or where no organic solvents are used for laundering.	(e)(5)	Not addressed as separate category.
	Wells used to inject wastewater from food processing operations.	(e)(5)	Not addressed as separate category.
Industrial (§ 144.81(b)) ..	Wells used to inject non-hazardous wastewaters generated by industrial, commercial, and service establishments and that are not included in one of the above categories; these include wells used to inject fluids from carwashes where engine or undercarriage washing is performed.	(e)(5)	5W20 (Industrial Process Water and Waste Disposal), 5D4 (Industrial Drainage), 5X17 (Air Scrubber Waste Disposal), 5X18 (Water Softener Regeneration Brine Disposal), 5X29 (Abandoned Drinking Water Wells, if used for the subsurface emplacement of industrial or commercial wastes not injected in one of the above categories of wells), 5X27 (Other).

The fourth type of other industrial well listed in Table 2—wells used to inject wastewater from food processing operations—will receive special attention in the ongoing study of Class V wells. As a group, EPA believes most of these wells pose a lower risk than the industrial wells that would be regulated under today's proposal, because the injectate is primarily food rinsewater or equipment washdown water containing small quantities of food particles and relatively low concentrations of contaminants. The Agency recognizes, however, that there may be other wells in this group that pose a higher risk, such as wells that inject brine from pickling operations, nutrient-rich wastewater from potato processing plants, and so forth. EPA presently has very little information on these wells. Therefore, they will be examined more closely in the study to determine whether additional federal regulation is needed, and if so, what that additional regulation should entail. In the meantime, if UIC Program Directors have information that any individual wells that fall in this category do pose a threat, they can use the existing UIC authorities discussed above to ensure protection of USDWs.

During the development of this proposal, the National Funeral Directors Association (NFDA) recommended that the other industrial well category be broadened to include Class V septic systems operated by funeral homes. This would move these wells out of the industrial well category, where they fit in today's proposal, and thus remove them from the proposed requirement to meet MCLs at the point of injection. In support of this recommendation, NFDA submitted to EPA a report titled *Septic System Treatment of Funeral Home Wastewater,* March 18, 1998 (copy available for review in the docket). According to NFDA, this report shows that only three preservative compounds with potential human health concerns—formaldehyde, methanol, and phenol—are likely to be found in funeral home wastewater in concentrations that exceed health-based levels (MCLs are not available for these chemicals). The report concludes that these compounds are generally adequately treated in septic systems such that concentrations exceeding the health-based levels do not exit the system. NFDA stated that it is unaware of any incidence of contamination of USDWs by funeral home septic systems.

Today's proposal does not include septic systems operated by funeral homes in the other industrial well category, because EPA needs additional time to evaluate the data submitted by NFDA and determine whether such a classification of funeral home wells is warranted. EPA requests comment and additional data on the proper classification of funeral home septic systems. Specifically, EPA requests comment on the information contained in the NFDA report as well as comment and information on any important topics that are not addressed in the NFDA report but have a bearing on this decision. Based on public comment and data, EPA may classify these wells as other industrial wells which are outside the scope of this rulemaking.

Additional discussion is needed to clarify how stormwater drainage wells are categorized in today's proposal. As shown in Table 2, wells used to drain stormwater runoff would be classified as drainage wells (not subject to new requirements under today's proposal), while industrial drainage wells would be classified as industrial wells (subject to the proposed new requirement to meet MCLs at the point of injection). The industrial drainage well category, however, does not include Class V wells intended for stormwater management that may have the potential to receive insignificant amounts of waste due to unintentional small volume leaks, drips, or spills and that cannot reasonably be separated from potential sources of contamination. Such wells, even if they were located at a commercial or industrial site, would be classified as stormwater drainage wells and excluded from the new regulation. In this context, ''cannot reasonably be separated'' means a well that cannot be moved farther away or uphill from a potential source of contamination (e.g., due to property boundaries, site layout, or other physical constraints) and cannot be separated from a source by berms, dikes, or drainage ditches and still perform the function of draining stormwater runoff from a site. For example, a well at a gas station would be considered a stormwater drainage well, not an industrial well, if it is located reasonably far away from the gas pumps in a downhill direction and only drains stormwater runoff occasionally contaminated with insignificant amounts of gas due to unintentional small volume leaks, drips, or spills at the pumps. However, a well at a gas station or other commercial or industrial site that is in position to directly receive bulk spills of materials or wastes, or to receive highly contaminated runoff due to large leaks or spills, would be classified as an industrial drainage well, even if the well is intended for stormwater management.

EPA requests comment on this proposed treatment of stormwater drainage wells. The Agency is attempting to reasonably distinguish between a well at a commercial or industrial site that routinely receives highly contaminated drainage or is susceptible to significant spills of chemicals or wastes, and a well at a commercial or industrial site that is intended for stormwater management but also may receive the unintentional insignificant leaks, drips, or spills that are commonly contained in street runoff. If these two kinds of wells can be distinguished, the wells that are more like industrial wells could be regulated like industrial wells and the wells that are more like stormwater management wells could be regulated like drainage wells. EPA realizes, however, that it may not be practical to make this distinction, potentially allowing some endangering drainage wells at commercial or industrial sites to escape the additional regulations proposed today. EPA also realizes that the proposed categorization may be at odds with the programs currently being implemented by existing UIC authorities. Therefore, the Agency requests that commenters specifically address the merits and potential impact of the proposed categorization. Based on these comments, EPA may classify all drainage wells at commercial or industrial sites as industrial wells in the final rule.

Finally, wells used to inject fluids from carwashes are in one of two categories depending on whether the carwashes perform engine or undercarriage washing. Only those wells at car washes that are specifically set up to perform engine or undercarriage washing are considered to be Class V industrial wells under the proposed rule. Wells at coin-operated, manual carwashes where people use hand-held hoses to wash only the exteriors of vehicles would be classified as other industrial wells, as would those at any other vehicle washing facility not set up to perform engine or undercarriage washing. The cleaning solutions used at these carwashes generally consist of soap solutions, rinsewater, and wax, and do not contain degreasing agents or solvents such as methylene chloride or trichloroethylene. As a result, the spent washwater disposed in a carwash well that qualifies as another industrial well primarily contains detergents, road salts, sediments, and incidental contaminants that may be washed from a vehicle's exterior, comparable to typical stormwater runoff.

B. Requirements for Motor Vehicle Waste Disposal Wells

As discussed below, EPA is co-proposing two approaches for regulating Class V motor vehicle waste disposal wells in ground water-based source water protection areas: (1) A ban of new and existing wells in such areas; and (2) a ban of new wells and a provision giving owners or operators of existing wells an opportunity to apply for a waiver from the ban by seeking a permit that requires fluids to meet MCLs at the point of injection. EPA also is soliciting comment on a specific alternative to these proposed approaches. As recommended by some members of the Small Business Advocacy Review (SBAR) Panel, the preamble also seeks comment on the issue of allowing waste to be injected, in certain situations, that exceeds some MCLs at the point of injection. EPA does not support this concept because it believes that injecting waste above the MCLs within source water protection areas would pose a threat to the public that is drinking this water.

1. Proposal to Ban New and Existing Wells

As one option, EPA proposes to ban motor vehicle waste disposal wells in source water protection areas delineated for ground water supplying community water systems and non-transient non-community water systems. Starting on the effective date of the rule, owners or operators of such existing wells would be required to cease injection operations and close their well within 90 days of the completion of the local source water assessment program responsible for their area. The UIC Program Director would be allowed to extend this deadline for up to one year in situations where the most efficient compliance option is connection to a sanitary sewer or installation of new treatment technology. UIC Program Directors also would have additional flexibility to extend the deadline for a reasonable amount of time beyond a year through compliance agreements with owners or operators of existing wells. Additionally, UIC Program Directors could use compliance agreements to extend the 90-day deadline in cases where an owner/operator is waiting for the permitting authority to act on an application for a waste disposal permit. New motor vehicle waste disposal wells, and new conversions to such wells, in those delineated areas would be prohibited starting on the effective date of the rule. For the purpose of the Class V regulations, an ''existing'' well would be one that is operational or under construction when the rule becomes effective. A new well or new conversion would be anything starting construction after the rule's effective date. If a state does not have a complete source water assessment program by May 2003, the ban would apply throughout the state.

As discussed above, EPA proposes to focus this initial rule on certain source water protection areas for the purpose of defining a category of high risk wells and prioritizing national policy. The rule would establish specific measures to ensure that this category of Class V wells do not endanger USDWs in the highest-priority areas. All existing Class V authorities, including the prohibition against endangering USDWs in § 144.12 and the authority to call problem wells in for a permit under § 144.25, would continue to apply in all areas. EPA expects and strongly encourages states to use these existing authorities to take whatever measures are needed to ensure all Class V wells are not endangering USDWs in any other sensitive areas beyond delineated source water protection areas. Examples of other sensitive areas that may warrant priority attention are provided in section IV.B.1 above. Nothing in this proposed rule precludes a state or local government from promulgating more stringent requirements above and beyond those contained in the rule.

The proposal to ban motor vehicle waste disposal wells located in source water protection areas is based on the high potential for these wells to endanger USDWs. Available information and damage cases, combined with years of experience implementing the Class V UIC program, show that these wells stand out as particularly troublesome.

There are approximately 183,000 automotive-related disposal wells. These wells are located in every state in the country—mainly in populated areas—at a variety of facilities, such as automobile service stations, car dealerships, automotive repair shops, and specialty repair shops (e.g., transmission shops, muffler shops, body shops). They tend to be shallow, with injection occurring into or above USDWs. They also tend to be uncased, which could allow contaminated fluids to move more easily into USDWs. Given all of these factors, the quality of fluids they inject becomes very important in determining whether these wells are a threat to USDWs.

Although the development and use of best management practices (BMPs) by the automotive industry have improved recycling and waste disposal practices over the past decade, EPA is concerned that there are motor vehicle-related facilities which inject fluids with little or no treatment. These fluids, which may be injected intentionally for waste disposal or accidentally as a result of spills or leaks, include spilled gasoline and oil, waste oil, grease, engine cleaning solvents, brake and transmission fluids, and antifreeze. Such fluids contain potentially harmful contaminants, often in high concentrations. For example, fluids containing waste oils or gasoline generally include benzene, toluene, xylenes, and other volatile contaminants. Waste oils and antifreeze also contain some priority pollutant heavy metals, such as barium, cadmium, chromium, and lead. Other contaminants that may be injected include methylene chloride, a compound found in many degreasers, and ethylene glycol, a component of antifreeze. All of these contaminants can be toxic above certain levels. Some, such as benzene and toluene, have the potential to cause cancer.

Data collected for the 1987 Report to Congress and from later EPA Regional investigations indicate that fluids being injected may exceed health-based limits for contaminant levels in water by 10 to 100 times (see p. 5–19 of the August 1989 Class V Task Force Report available in the docket). These data were confirmed for a number of motor vehicle service stations during the implementation of a 1991 National Administrative Order addressing failures to submit inventory information required under 40 CFR 144.26 and 146.52(a). Analyses of fluids disposed at a group of facilities subject to this order found a total of 13 contaminants present in concentrations above the drinking water MCL, although not all contaminants exceeded the MCL in every sample at every facility (see *Data from the National Administrative Order on Motor Vehicle Waste Disposal Wells,* March 16, 1998, available in the docket). For example, benzene concentrations exceeded the drinking water MCL at 19 of the 20 facilities tested and in 32 of 35 samples analyzed. The highest measured benzene concentration was 40 times the MCL. Similarly, arsenic exceeded the MCL at 11 of 17 facilities and in 18 of 30 samples, with the highest arsenic concentration being 31 times the MCL.

The injection of used petroleum products may leave behind an oily residue within the wells. A 1995 report on natural bioattenuation of hazardous organic compounds in the subsurface states: ‘‘Most organic contaminants, however, enter the subsurface as an oily liquid, such as a fuel spill or release of chlorinated solvent. Groundwater moving through the material dissolves a small portion of the contaminant, which becomes a plume of groundwater contamination. Because the contaminant mass in the oily material is much greater than that dissolved in the groundwater, the spill can continue to maintain the plume more or less indefinitely. As the plume moves away from its source natural biological processes may attenuate the contamination in the groundwater.’’ [2]

Examples of instances where motor vehicle-related waste disposal wells have endangered USDWs are numerous. They include a case in Missoula, Montana, a sole-source aquifer area, where investigations starting in June of 1988 discovered that tetrachloroethylene (PCE) from operating drainage wells at auto service stations had contaminated community wells serving approximately 45,000 people.[3, 4] Three community wells were closed and another 15 have elevated levels of PCE. In Gilford, New Hampshire, a March 1988 assessment of a site with a garage, a tire center, auto body shop, and a U.S. Army Reserves maintenance shop discovered that operating floor drains had contaminated the ground water, the soil, and an on-site water supply with PCE.[5] In Exton, Pennsylvania, trichloroethylene (TCE), PCE, and 1,1,1-trichloroethane from a stone bed drain field connected to floor drains of an auto repair/body shop operating until 1984, contaminated ground water that supplies drinking water to about 76,700 people.[6] In Liberal, Kansas, solvents disposed in a septic system by an engine repair shop resulted in volatile organic compound (VOC) contamination of several water supply wells in 1982; concentrations of VOCs in the septic system were as high as 32,000 ug/l.[7] All of these incidents occurred before 1989. Some small entity commenters have suggested that motor vehicle facilities routinely use management practices, such as recycling of used antifreeze and motor oil, that would significantly reduce the risk of such contamination. EPA, however, conducts periodic inspections that indicate that many facilities do not routinely implement best management practices. EPA requests information on more recent instances of contamination of USDWs by Class V motor vehicle wells, as well as any data commenters may have on the use of BMPs. EPA also requests information on situations where USDWs or drinking water wells were discovered to contain constituents found in motor vehicle waste.

Many of these documented problems have been associated with the improper disposal of fluids that qualify as a hazardous waste under the Resource Conservation and Recovery Act (RCRA). In other words, some motor vehicle waste disposal wells are in fact Class IV wells, which are already generally banned by 40 CFR 144.13. Data obtained from the 1991 National Administrative Order suggest that 13 percent of the motor vehicle waste disposal wells inject fluids that exhibit the toxicity characteristic for RCRA hazardous waste. Considering the potential for these wells to also receive listed hazardous wastes,[8] such as certain spent

[2] Anderson, William, Innovative Site Technology, Bioremediation, Chapter 3.4, page 1, 1995

[3] Background Paper prepared by Alan English, Missoula City-County Health Department for U.S. EPA Underground Injection Control Program, February 1992.

[4] ‘‘An Investigation of the Volatile Organic Content of Sludges, Soils and Liquids Entering the Missoula Aquifer from Selected Sources,’’ prepared by the Missoula City-County Health Department, Environmental Health Division, Contributors: Tom Barger and Alan English, July 27, 1990.

[5] Background information titled ‘‘5X28 Service Station, Gilford, NH’’ available in the docket. This background information was obtained from U.S. EPA Region 1 staff in May 1990.

[6] Superfund Site Fact Sheet, A.I.W. Frank/Mid-County Mustang Site, Pennsylvania, EPA ID# PAD004351003, Last Update: March 1998. http://www.epa.gov/reg3hwmd/super/aiwfrank/pad.htm.

[7] Site Description Printout for the Panhandle Eastern Pipeline Site, from Teresa Hattan, Kansas Department of Health and Environment, July 15, 1998.

[8] A waste can qualify as a RCRA hazardous waste either by exhibiting one of the four characteristics of hazardous waste (ignitability, corrosivity, reactivity, or toxicity) or by being named on one of four lists developed by EPA. The cited 13 percent of facilities injecting waste that exhibits the toxicity characteristic does not account for the additional facilities that may be injecting a listed hazardous waste.

solvents that may be spilled while motor vehicle parts are being cleaned, the fraction of wells inadvertently injecting hazardous waste may actually be greater. One study by the New Jersey Department of Environmental Protection, for example, determined that six out of ten automotive waste disposal wells examined (60 percent) were actually Class IV injection wells (see p. 7 of Distribution of Organic Contaminants in Automotive Waste Disposal Drywell Systems available in the public docket). Some small entity representatives and advocates involved in the development of this proposal have commented that cases of contamination caused by the shallow injection of hazardous waste at motor vehicle facilities simply underscore the reason for banning Class IV wells and point to the need for greater enforcement of this existing ban, not the need for greater regulation of properly operating Class V motor vehicle waste disposal wells. EPA, however, believes such cases are a symptom of a Class V regulatory problem that needs to be fixed. In particular, the lack of specific regulatory requirements that mandate control measures to prevent endangerment may provide an incentive to some well owners or operators to inject hazardous fluids in Class V wells, either unknowingly or on purpose, to avoid more stringent regulations governing other waste disposal practices. This is a real concern for motor vehicle waste disposal wells, such as floor drains in service bays, which are susceptible to spills of fluids that commonly qualify as hazardous waste. In these situations, UIC inspectors usually cannot tell if a motor vehicle waste disposal well is a Class V or a Class IV well.

Some states, localities, and industry sources have already identified these wells as potentially posing a threat to USDWs and have taken steps to address this threat. For example, Connecticut published a guidebook for local officials with regulatory responsibility for Class V wells (Best Management Practices for the Protection of Ground Water, November 4, 1992) recommending that all discharges from existing wells at automotive repair and service facilities to other than a sanitary sewer be prohibited, and that discharges at new or expanded facilities in wellhead protection areas also be prohibited. The state also recommends that any authorized wells should be permitted and their compliance with published best management practices should be certified. Massachusetts does not allow anyone to put fluids in a service station floor drain without a ground water discharge permit. New Hampshire disallows discharges into floor drains at automotive facilities. The City of Missoula, Montana requires a permit for the use of drainage wells at motor vehicle fueling facilities and requires a separate stormwater collection system with control devices to prevent infiltration of fuel-contaminated water into such wells. Other states also have permitting requirements for motor vehicle and industrial Class V wells in various circumstances. Finally, the American Petroleum Institute has developed industry guidance recommending that oil companies and service stations eliminate the use of Class V wells to dispose of motor vehicle-related waste (Handling Water Discharges from Automotive Service Facilities Located at Petroleum Marketing Operations, API Recommended Practice 1633, January 1992). Because one of EPA's proposed options would allow continued permitting of Class V motor vehicle wells in SWPAs, EPA is very interested in state experience with such permitting programs. Do states issue general permits, applying to classes of facilities, and under what conditions? What are the requirements for state issued permits regarding BMPs, monitoring, and allowable contaminant concentration levels? How much discretion do state permit writers have in implementing these requirements? Have there been specific problems with state permitting programs? How effective have they been at preventing Class V wells from endangering USDWs? Would there be special difficulties for states with existing permitting programs if EPA were to require them to close previously permitted wells in SWPAs?

Based on the above information and experience, EPA believes that banning motor vehicle waste disposal wells in source water protection areas would achieve substantial protection.

EPA has designed the ban on motor vehicle waste disposal wells to be self-implementing by owners or operators, with minimal new reporting requirements and no new inspection or other administrative requirements. Owners or operators would have substantial flexibility to choose how they want to close their wells. Some may choose to connect their floor drains to a municipal sewer system or holding tank, whose contents can be periodically cleaned out and disposed of properly. Others may permanently seal their floor drains or disconnect them from existing wells. In these latter situations, owners or operators would have to use alternative methods for managing motor vehicle-related fluids, such as: (1) Recycling and reusing wastewater as much as possible; (2) collecting and recycling petroleum-based fluids and coolants drained from vehicles; (3) washing parts in a self-contained, recirculating solvent sink, with spent solvent being recovered and replaced by the supplier; (4) using absorbents to clean up minor leaks and spills, and placing the used materials in approved waste containers and disposing of them properly; and (5) using a wet vacuum or mop to pick up accumulated rain or snow melt, and disposing of it through a publicly owned treatment works. EPA recognizes that facilities may need to comply with other regulatory requirements (e.g., obtain permits) in order to make use of one of these options. EPA believes, based on firsthand experience with owners and operators, that most facilities can easily implement these alternatives within a short period of time.

If all motor vehicle waste fluids generated at a service facility are segregated so that none are injected, the facility's Class V well may not be prohibited and could be used to dispose of other waste streams, such as stormwater, ice melt, and carwash waste water. EPA advises that Directors use careful judgment in making such an allowance, however, limiting it to cases in which unintentional or illicit discharge of motor vehicle waste fluids into the well is unlikely based on the facilities compliance history and availability of adequate records showing proper waste management and disposal. In these instances, the well is converted from a motor vehicle waste disposal well to another type of Class V well defined by the nature of fluids it receives. For example, a service station could perform all vehicle maintenance in areas that do not drain to the Class V well. If the service bay connected to the Class V well is then used only for draining ice melt or stormwater from tires or vehicle exteriors, the well would qualify as a Class V stormwater drainage well. If the service bay connected to the Class V well is used for the exterior washing of vehicles (and no engine or undercarriage washing is performed), the well would qualify as an other industrial well. As another example, owners or operators could install a semi-permanent plug (also known as a plumber's plug) in the sump outlet leading to the injection well.

by the Missoula City-County Health Department, Environmental Health Division, Contributors: Tom Barger and Alan English, July 27, 1990.

Automotive waste and spills could then be collected in the sump and periodically disposed offsite. When necessary, the plug could be removed and the well used for non-automotive waste only. In order for this approach to be acceptable, the plug would truly have to be semi-permanent. It cannot be something that is easily removed, which would create the potential for the well to remain open and subject to abuse. Because EPA remains concerned about potential abuses, EPA requests comment on the use of semi-permanent plugs for well closure, particularly on their limitations and on circumstances where their use is or is not inappropriate.

Regardless of the closure method selected, owners or operators would be required to close their well in a manner that complies with the prohibition of fluid movement standard in § 144.12 as well as any additional or more specific closure standards that may be established by the UIC Program Director. This closure requirement would be like the one that exists in § 144.23(b)(1) for Class IV wells. The proposed rule would not specify any new soil or ground water sampling or site remediation requirements. However, EPA understands that closure of the well may trigger site characterization and remediation requirements under EPA Regional and Primacy State UIC Program implementation of 40 CFR 144.12, other state environmental programs, insurance policies, business contracts, local ordinances, and so forth. The economic analysis supporting today's proposal, therefore, reflects the costs of complying with these other existing requirements, where they are likely to apply (EA section 2.3.5). Any such remediation should be, to the extent possible, carried out consistently with any ongoing remediation of underground storage tank contamination at affected facilities. In addition, any wastes generated during well closure or under alternative waste management scenarios after the wells are closed, such as spent cleaning solutions and absorbents, will have to be managed in accordance with applicable solid and hazardous waste regulations. EPA estimates capital costs ranging from $2,500 to $10,000 and annual O&M costs ranging from $700 to $26,000 per facility, depending on the particular waste stream and off-site management option selected. EPA estimates that these costs for most facilities will be at the low end of the ranges. Only a few of the affected well types will experience costs at the high end of the ranges. EPA requests comment on its well closure and alternate waste management cost estimates.

For EPA-administered (DI) Programs only, owners or operators of wells being closed would be required to notify the UIC Program Director of the intent to close their well at least 30 days prior to closure (owners or operators of wells in Primacy States would have to meet any state-established reporting requirements). This is the same requirement that currently exists in § 144.23(b)(3) for Class IV wells. Based on the Agency's experience and knowledge of how the federal UIC program runs, EPA believes such pre-closure notification is needed as a mechanism for DI Programs to track high-priority closures. The Agency, however, does not know if all state programs need this same requirement. States may already have, or could develop, another or a better mechanism that they prefer. Therefore, rather than impose pre-closure notification as a minimum federal requirement that all Primacy States must adopt, EPA proposes to keep this aspect of the new requirements flexible. If some states want it, they can choose to adopt the same or a similar requirement under their own authority when they amend their program. Alternatively, EPA requests comments on whether such pre-closure notification should be required in every state. If such an approach is clearly necessary based on these comments, EPA could broaden the requirement to Primacy States in the final rule.

2. *Proposal to Ban New Wells and Require Existing Wells to Either Close or Get a Permit*

As another option, EPA proposes the same ban on new and existing motor vehicle waste disposal wells as discussed above, but would give states the option of allowing owners or operators of existing wells to seek a permit to continue using their wells. In states adopting this option, and in areas where EPA is the primacy agent, owners or operators of existing wells would have to either close their wells or submit a permit application within 90 days of the completion of the local source water assessment program responsible for their area. While the permit application is under review, existing wells could continue to operate subject to the condition that fluids released in the wells meet the primary drinking water MCLs at the point of injection, or, if an MCL is not available for specific pollutants, other appropriate health-based standards approved by the UIC Program Director.[9] As with the first option, the UIC Program Director would be allowed to extend the closure deadline (but not the application submittal deadline) for up to one year in situations where the most efficient compliance option is connection to a sanitary sewer or installation of new treatment technology. UIC Program Directors also would have additional flexibility to extend the closure deadline for a reasonable amount of time beyond a year through compliance agreements.

In primacy states that adopted this option, it would require more state effort than the first proposal. UIC Program Directors would have to review the permit application and site-specific conditions for each facility wishing to keep its motor vehicle waste disposal well open. Based on this review, Directors would have to either deny the application or develop and enforce permit requirements to make sure the well does not endanger USDWs.

The specific permit requirements could vary from one well to the next, but would have to include the following three conditions at a minimum. First, owners or operators would have to make sure fluids released in their wells meet the primary drinking water MCLs at the point of injection or other appropriate health-based standards approved by the UIC Program Director, if an MCL is not available for specific pollutants (comments are being solicited on whether this requirement could be relaxed and that EPA does not believe that relaxing this requirement would provide adequate public health protection, see section II.C.6). Second, owners or operators would have to follow accepted BMPs for motor vehicle-related facilities. The BMPs recommended in the State of Connecticut's Best Management Practices for the Protection of Ground Water and API's Handling Water Discharges from Automotive Service Facilities Located at Petroleum Marketing Operations, both available in the docket, serve as good models. Third, owners or operators would have to monitor the quality of their injectate and sludge (if present in dry wells or tanks holding injectate) both initially and on a continuing basis in order to demonstrate compliance with the MCLs. The rule, however, would not specify new injectate monitoring requirements that must be followed, leaving those instead to the discretion of the Director.

[5] Background information titled "5X28 Service Station, Gilford, NH" available in the docket. This background information was obtained from U.S. EPA Region 1 staff in May 1990.

When all of these requirements are put together, EPA believes the permit would specify a monitoring and action plan similar to the following, but recognizes that states will design monitoring requirements appropriate to the situation. As a first step, owners or operators might be required to characterize the quality of their injectate and any sludge. If liquid from the sludge has chemical concentrations below the MCLs, owners or operators might be required to analyze the injectate quarterly for the first three years and then annually if it is consistently below the MCLs. They also might be required to analyze their sludge annually. If the injectate is below the MCLs but liquid from the sludge is above the MCLs, then owners or operators might have to follow the same monitoring requirements as above plus pump and properly dispose of their sludge. Finally, if the injectate is above the MCL and the liquid from the sludge is above the MCL, then the permit might require: (1) Implementation of specific BMPs or treatment measures; (2) pumping and proper disposal of their sludge; (3) quarterly sampling of injectate for the first three years and then annually if consistently below the MCLs; (4) annual sampling of the sludge; and (5) other requirements established by the Director to protect USDWs. EPA requests comments on this possible set of permit requirements, and any others that could be used to protect USDWs from motor vehicle waste disposal wells. EPA is particularly interested in receiving comment on the appropriate frequency of the injectate monitoring outlined above given the high variability and unpredictable nature of the fluids that may be spilled or released into motor vehicle waste disposal wells.

This option recognizes that there may be instances in which owners or operators of existing motor vehicle waste disposal wells in source water protection areas want to keep using their wells and can do so safely given their site-specific circumstances. These circumstances include the use of BMPs and/or treatment technologies that effectively keep potentially endangering fluids from entering the well, combined with regular injectate monitoring, to make sure fluids meet MCLs at the point of injection. Some small entity representatives and advocates involved with the development of this proposal indicated that many service stations and repair shops have already adopted BMPs, such as the recycling of used motor oil and antifreeze, spill prevention and control, and the use of environmentally friendly cleaning products, which have significantly reduced both the volume and toxicity of their injectate. These stakeholders asserted that the use of such practices is now widespread in the automotive service industry, making it unnecessary to categorically ban every well. Under this option, therefore, certain motor vehicle waste disposal wells in delineated source water protection areas could remain open, if approved by the UIC Program Director based on a review of site-specific circumstances and if controlled through a permit that requires MCLs to be met at the point of injection and any other conditions believed necessary to protect USDWs.

3. Alternative

EPA is requesting comment on an alternative to the two proposals outlined above. Under this alternative, EPA could require owners or operators who want to continue using motor vehicle waste disposal wells in delineated source water protection areas to make sure fluids meet MCLs at the point of injection. This would differ from the first proposal by not having an outright ban and it would differ from the second proposal discussed above by eliminating the site-specific permit requirement for owners or operators whose injectate and sludge meet the MCLs. Instead, the requirement to meet MCLs at the point of injection would be specified in the regulation as a condition for continued rule authorization. The regulation also would specify monitoring requirements and actions to take based on the monitoring results. Owners or operators of existing wells who do not want to or cannot meet these conditions would have to close their wells according to the same schedule discussed above. New wells in source water protection areas would be prohibited starting on the effective date of the rule.

The specific monitoring requirements that EPA proposes, and requests comment on, are the same as the potential permit requirements described for the second proposal above. That is, owners or operators would be required to initially characterize their injectate and sludge quality. If liquid from the sludge has chemical concentrations below the MCLs, owners or operators would be required to (1) analyze the injectate quarterly for the first three years and then annually if it is consistently below the MCLs, and (2) analyze the sludge annually. If the injectate is below the MCLs but liquid from the sludge is above the MCLs, then owners or operators would have to follow the same monitoring requirements and pump and properly dispose of their sludge. If the injectate is above the MCL and the liquid from the sludge is above the MCL, owners or operators would have to either close their wells or make process or operational changes to ensure compliance with the MCLs.

This approach for regulating existing motor vehicle waste disposal wells would be almost identical to the proposed approach for regulating Class V industrial wells, discussed below. The only difference would be more extensive monitoring at motor vehicle waste disposal wells. EPA believes this difference is justified given the nature of the fluids routinely handled at motor vehicle-related facilities (e.g., waste oils and solvents that have high concentrations of toxic constituents) and the relatively high potential for spills of these fluids to occur and enter floor drains. Under these conditions, the quality of the injectate can be highly variable and unpredictable, and regular monitoring is needed to confirm that a problem does not exist or to detect a problem early so that it can be quickly mitigated. EPA believes the situation is different for most Class V industrial wells, where the injectate is a process wastestream that is more constant in terms of quality and quantity than the spills that are the primary concern at motor vehicle-related facilities. Therefore, although some industrial wells are also susceptible to spills or process upsets as discussed in the next section below, frequent and regular monitoring at industrial facilities is less important in controlling injectate quality and protecting USDWs. EPA requests comment on this position as well as suggestions for the specific monitoring requirements that would be appropriate for motor vehicle waste disposal wells.

C. Requirements for Class V Industrial Wells

1. Proposal

Owners or operators of existing Class V industrial wells in source water protection areas—delineated for community water systems and non-transient non-community water systems that use ground water as a source—would as a condition of rule authorization be required to either (1) make sure fluids disposed in their wells meet MCLs at the point of injection, or (2) close their wells. New wells in such areas, including new conversions to Class V industrial wells, would be prohibited unless they were able to meet the same standard on injectate quality. For the purpose of this regulation, an ''existing'' well would be one that is operational or under construction when the rule becomes effective. A well or well conversion would qualify as ''new'' if construction started after the rule's effective date. Because primary MCLs may not exist for some pollutants released in industrial wells, UIC Program Directors would have discretion to require the injectate to meet other appropriate health-based limits, as needed to protect USDWs for these other contaminants. Industrial well closures would be subject to the same basic closure requirements as proposed for motor vehicle waste disposal wells, including the requirement that owners or operators in DI Programs submit pre-closure notification at least 30 days prior to abandonment.

The timing for these new requirements would be the same as that proposed for motor vehicle waste disposal wells. Starting on the effective date of the rule, existing wells would have to meet the MCLs or close within 90 days of the completion of the source water assessment program for their local area. The UIC Program Director would be allowed to extend this deadline for up to one year in situations where the most efficient compliance option is connection to a sanitary sewer or installation of new treatment technology. UIC Program Directors also would have additional flexibility to extend the deadline for a reasonable amount of time beyond a year through compliance agreements with owners or operators of existing wells. The requirements for new and converted industrial wells in delineated areas would start applying immediately on the effective date of the rule.

Available information suggests that additional federal regulation is needed to address the risk posed by Class V industrial wells located in delineated areas. Industrial process water and waste disposal (5W20) wells, one major well type that fits in the industrial well category defined above, pose a significant threat to USDWs especially if they inject highly contaminated and/or large volumes of waste. According to the 1987 Report to Congress, such wells could potentially receive any fluid disposed by the various industries that use Class V wells (e.g., commercial printing, die and tool manufacturing, machinery and equipment manufacturing, chemical production, and drycleaning). For example, the Report estimated that in Nassau and Suffolk Counties in New York, an average of 20 million gallons per day—or, 36 thousand pounds per day of total dissolved solids—was injected into the subsurface by such facilities. This occurred in the early 1980's (Report to Congress, p. 4–278).

Industrial drainage (5D4) wells, also within the Class V industrial well category, also pose a significant threat of contamination to USDWs especially if they inject poor quality fluids, are susceptible to accidental industrial spills, and are available for abuse through illicit discharges. For example, studies from Nationwide Urban Runoff Program projects in Fresno, CA and Spokane, WA in 1984 and 1986, respectively, have shown that industrial areas had the lowest quality stormwater runoff of all land-use types evaluated (Report to Congress, p. 4–37). A particular example illustrating this high hazard potential occurred in Hutchinson, Kansas (in 1986) where a diesel/tar mixture from a newly tarred roof washed into what would now be classified as an industrial drainage well during a rainstorm, and a nearby city water well was shut down as a result of the injected hydrocarbon mixture (Report to Congress, p. 4–38).

Requiring Class V industrial wells in source water protection areas to meet primary MCLs, or other appropriate health-based limits selected by the UIC Program Director, at the point of injection will greatly reduce the threat of these wells. EPA is proposing this approach rather than an outright ban of industrial wells because of a lack of information indicating that a ban is always warranted. Also, this approach is consistent with the controls already imposed in some locations. For example, Class V industrial wells in Florida are required to meet MCLs at the point of injection, as are most kinds of Class V industrial wells in Massachusetts. Requiring MCLs to be met at the point of injection would establish a clear threshold to ensure the wells are not endangering USDWs, but would give owners or operators flexibility in deciding how to meet that threshold. In some cases, it will require no action or simple containment and/or treatment measures. Owners or operators wishing to keep their wells open may also have to monitor their injectate quality to adequately assure that it does not exceed MCLs though EPA is not proposing any specific monitoring requirements for owners and operators of Class V industrial wells. Owners or operators who are not able to ensure that their discharge meets MCLs at the point of injection (or who choose not to because of the high cost of doing so) would have to close their wells.

2. Alternatives

As an alternative to the proposed approach, EPA could ban all or certain Class V industrial wells in source water protection areas as part of this rulemaking. For example, the ban could be extended to wells that dispose of washwater from car washes where motor or undercarriage washing is performed. As mentioned previously, EPA does not believe sufficient information exists to support a broader ban at this time. Additional bans, however, could be justified and imposed as part of subsequent rulemakings, if additional information supporting a broader ban becomes available.

EPA also requests comment on whether the pre-closure notification requirement for industrial wells should be added in Primacy State programs. As discussed above for motor vehicle waste disposal wells, EPA currently believes it would be best to restrict that requirement to DI Programs, as it has restricted the pre-closure notification requirement in § 144.23(b)(3) for Class IV wells. Finally, elsewhere in this preamble, comments are requested on whether the requirement that injectate from industrial wells in source water protection areas always meet all MCLs at the point of injection could be relaxed under any circumstances without endangering USDWs. EPA's does not support this position because it believes that allowing injection of waste that exceeds the MCL into source water protection areas poses an endangerment to the USDW and to people that drink this water.

D. Ban of Large-Capacity Cesspools

Cesspools are Class V wells that receive untreated sanitary waste and allow the waste to percolate directly into the subsurface. Only those cesspools with the capacity to serve 20 or more persons per day are subject to UIC regulation.

As discussed in the August 28, 1995 proposal, EPA believes such large-capacity cesspools have a high potential to contaminate USDWs because: (1) Sanitary wastes released in cesspools frequently exceed drinking water MCLs for nitrates, total suspended solids, and coliform bacteria (Report to Congress, p. 4–151); (2) the wastes released in cesspools also contain other constituents of concern, including phosphates, chlorides, grease, viruses, and chemicals used to clean cesspools such as trichloroethane and methylene chloride; and (3) cesspools provide no treatment except for some settling of the solids. In addition, the 1987 Report to Congress notes that some states have reported degradation of USDWs from such cesspools (Report to Congress, p. 4–151). Based on these concerns, new cesspools are already banned in most states. Where such bans presently exist, states are phasing out existing cesspools over a time period negotiated by state and local governments and acceptable to EPA.

The August 28, 1995 notice proposed not to impose a federal ban on large-capacity cesspools because of the actions being taken to control cesspools at the state level. The Agency proposed instead to use its existing enforcement authorities to supplement state bans where necessary to ensure compliance with the non-endangerment requirements of § 144.12.

Some commenters on the August 28, 1995 proposal raised a number of issues associated with this approach. For example, the Sierra Club Legal Defense Fund asserted that the proposal fails to carry out SDWA requirements to prevent endangerment of USDWs, that reliance on existing enforcement authorities is inadequate, and that the existence of some state or local regulations does not justify an EPA decision not to regulate. In addition, one state commented that it has not banned new cesspools by existing regulations. A ban in the federal UIC regulations would ensure that these high-risk wells are not constructed in this state or any other state that does not have its own regulations banning them.

Based on these comments, EPA is today proposing to ban, starting on the rule's effective date, new large-capacity cesspools in source water protection areas delineated for community water systems and non-transient non-community water systems that use ground water as a source. Existing large-capacity cesspools in such areas would be required to close within five years of the effective date of the rule. Owners or operators of such cesspools in DI Programs would have to notify the UIC Program Director of the intent to abandon their cesspool at least 30 days prior to abandonment (owners or operators of large-capacity cesspools in Primacy States would have to meet any state-established reporting requirements). For the purpose of this regulation, a "new" cesspool would be one starting construction after the rule's effective date. An "existing" cesspool would be one that is operational or under construction when the rule becomes effective. These new federal requirements would strengthen existing programs to protect USDWs.

Existing large-capacity cesspools would have five years to close instead of 90 days with a possible one year extension proposed for motor vehicle waste disposal wells because cesspool owners or operators may need this amount of time to implement appropriate alternatives for managing their sanitary waste. In particular, they cannot stop the generation of sanitary waste, so the only options they would have would be to connect to a sanitary sewer system or install a septic system. Both of these options may take more than a year to implement and may not even be feasible (e.g., the septic system option would not be feasible if onsite soils do not satisfactorily pass a percolation test). In comparison, there are generally accepted methods available to owners or operators of motor vehicle-related facilities to stop the disposal of motor vehicle waste fluids in Class V wells that can be implemented within 90 days with a possible one year extension. These alternatives include recycling, sending spent solvents back to suppliers, installing a semi-permanent plug in the well and a sump to capture any spills of motor vehicle fluids, running a dry shop, and the other BMPs discussed above. Although EPA recognizes that other types of permitting may be required for these options, EPA believes that 90 days is sufficient to complete this process.

EPA proposes to focus the large-capacity cesspool ban on ground water-based source water protection areas around community water systems and non-transient non-community water systems for the purpose of prioritizing national policy and because these are the highest risk wells. EPA expects and strongly encourages states to use existing authorities to take whatever measures are needed to ensure Class V cesspools are not endangering USDWs in any other sensitive areas outside delineated source water protection areas (see § IV.B.1 for examples of other such areas). If a state does not have a complete source water assessment program by May 2003, the federal ban on cesspools would apply throughout the state. EPA also requests comment on the merits and potential impacts of broadening the proposed cesspool ban to source water protection areas delineated for transient non-community water systems that use ground water as a source. Transient systems are those that serve at least 25 people but not on a regular basis (e.g., campground or highway rest stop). Including these additional areas within the scope of the proposed requirements for cesspools could address the unique acute risk associated with the shallow disposal of untreated sanitary waste in areas where ground water is used as a drinking water source.

As discussed above for motor vehicle waste disposal wells and industrial wells, EPA is proposing the pre-closure notification requirement for large-capacity cesspools in DI Programs because of the Agency's knowledge of how these programs run and what they need to track high-priority closures. Because EPA does not know if this same requirement is needed for all Primacy States, and is unsure if such a requirement may in fact create a burden that outweighs its benefits in the context of individual state programs, the Agency is not proposing to impose the pre-closure notification requirement on Primacy States. Instead, the proposal would give states flexibility to use their own authority to adopt this or a similar requirement tailored to their particular needs. However, EPA requests comment on this issue, including comments on the merits and potential impacts of extending the pre-closure notification requirement to Primacy States.

E. Exclusion Criteria for Septic Systems and Cesspools

As discussed in the August 28, 1995 notice, the current UIC regulations distinguish between septic systems used by single-family homes and non-residential septic systems that receive solely sanitary waste and have the capacity to serve fewer than 20 people. Section 144.1(g) excludes from UIC regulation "individual or single family residential waste disposal systems such as domestic cesspools or septic systems" and "non-residential cesspools, septic systems or similar waste disposal systems if such systems (A) are used solely for the disposal of sanitary waste, and (B) have the capacity to serve fewer than 20 persons a day."

EPA now believes there is no difference between a single-family residence septic system and a non-residential system serving only a small number of people, as long as the non-residential system receives only sanitary waste. Therefore, the August 28, 1995 notice proposed to revise § 144.1 to exclude from UIC regulation all cesspools and septic systems serving fewer than 20 people, regardless of where such systems are located. This revision would eliminate the distinction between septic systems used by single-family homes and small non-residential septic systems that receive solely sanitary waste. At the same time, EPA proposed to define cesspools and septic systems as wells receiving solely sanitary waste to distinguish them from similar devices receiving industrial waste waters, which would be defined as industrial waste disposal wells. Finally, EPA proposed to define sanitary waste as domestic sewage and household waste. EPA requested public comment on this proposal and any alternatives, such as exclusion criteria based on septic tank size (e.g., tanks under 2,000 gallons would not be subject to UIC regulation), flow rate (e.g., systems receiving less than 5,000 gallons per day would not be subject to UIC regulation), or dwelling size.

Of the 57 comment letters submitted on the proposal, 28 addressed this issue. Only two commenters supported the proposal to maintain the threshold of 20 persons per day for systems subject to regulation. Eighteen commenters preferred an alternative criterion, with most preferring a threshold based on flow rate. The suggested flow rates ranged from 2,000 to 20,000 gallons per day. A few of the commenters preferred a criterion based on septic tank size (ranging from 2,000 to 7,500 gallons), and one commenter suggested that a soil application rate be used (1.5 gallons per day per square foot). Apart from these 18 commenters who preferred an alternative criterion, four commenters asserted that all septic systems receiving solely sanitary waste—regardless of capacity—should be excluded from UIC regulation and addressed by states through other, existing legal authorities. Two other commenters stated that all cesspools—regardless of capacity—should be banned altogether.

In addition to comments on the threshold for regulation, seven commenters took issue with the proposed definition of sanitary waste. These commenters thought the proposed definition would not clearly establish that small septic systems and other similar systems receiving only domestic sewage and household-type wastes at commercial and industrial facilities are excluded from UIC regulation. The commenters suggested that the sanitary waste definition be broadened to include examples of commercial or industrial settings where the exclusion would apply. Alternatively, EPA could use a more general definition of sanitary waste that includes wastewater generated from human wastes; personal or employee food preparation; gray water (e.g., hand washing waste from lavatory and kitchen sinks); and other domestic-type wastes, regardless of where the waste was generated.

Based on these comments, as well as experience implementing the UIC program, EPA recognizes that the current 20 persons-a-day exclusion criterion in the federal UIC regulations has weaknesses. However, it is not now clear to EPA that a change to this criterion is necessary to protect USDWs or could be made without causing undue disruption to existing state and local programs. State programs currently interpret the criterion in different ways, with most programs using a septic system flow rate and other programs using a septic tank size or other measure. These various state interpretations appear to work well and achieve adequate protection of USDWs. EPA's adoption of an interpretation currently used by one or more states may not improve protection but might invalidate other state interpretations.

Therefore, EPA is again requesting comment on the § 144.1(g) criteria proposed on August 28, 1995, which would exclude all septic systems and cesspools with a capacity to serve fewer than 20 persons a day, without distinguishing between residential and non-residential systems. This time, however, the Agency asks that commenters specifically address the question of whether the federal criteria need to be changed to correct a significant operational problem, such as inadequate protection of USDWs or extreme burden or confusion in implementing the UIC program. If alternative criteria are believed to be needed, the Agency also requests that commenters propose a specific alternative and address how it would work if adopted on the federal level. The vast majority of commenters on the prior proposal simply suggested that EPA adopt one state's interpretation, without regard to how it might affect other states.

In response to comments on the proposed definition of sanitary waste, EPA agrees that the definition should be broadened to clarify that small-capacity septic systems or cesspools at commercial and industrial facilities are excluded from UIC regulation if they receive solely sanitary waste. Therefore, the Agency is re-proposing today a new sanitary waste definition in §§ 144.3 and 146.3 that references commercial and industrial facilities. This proposal is based in part on the household waste exclusion established in the RCRA regulations (40 CFR 261.4(b)(1)).

F. Other Amendments

As outlined in Table 1 at the beginning of this preamble, EPA is reproposing other minor revisions originally proposed in the August 28, 1995 notice, in order to provide a complete and coherent picture of all Class V UIC changes being contemplated. These revisions, on which EPA will continue to accept public comment, address (1) a few definitions in §§ 144.3 and 146.3, and (2) the classification of radioactive waste disposal wells in §§ 144.6 and 146.5. In addition, certain existing Class V requirements are being reiterated in or moved to the plain-English version of the consolidated Class V regulations in 40 CFR 144 Subpart G. EPA is not accepting comment on these requirements, identified with notes in the proposed rule language, because they already exist in the UIC regulations and are only being reworded to improve their clarity.

1. Sections 144.3 and 146.3—Definitions

In addition to the proposed new definition of sanitary waste discussed above, the proposed regulation would add new definitions for the terms ''cesspool,'' ''drywell,'' ''improved sinkhole,'' ''septic system,'' and ''subsurface fluid distribution system.'' The rule also would revise the existing definitions for ''well'' and ''well injection.''

The definition of ''cesspool'' and ''septic system'' would conform with the new Class V categories explained in section V.A of this preamble.

An ''improved sinkhole'' would be defined as a type of injection well regulated under the UIC program. Today's proposed definition would codify EPA's interpretation that the intentional disposal of waste waters in natural depressions, open fractures, and crevices (such as those commonly associated with the cooling of lava flows or weathering of limestone) fits within the statutory definition of underground injection.

A ''subsurface fluid distribution system,'' which is a term used in the proposed new definition of ''septic system,'' would be defined with a standard engineering description.

The definition of ''well'' would be revised to clarify that a ''well'' includes improved sinkholes and subsurface fluid distribution systems.

The definition of ''well injection'' would be revised to eliminate a redundancy and simply state that well injection means the subsurface emplacement of fluids through a well.

2. Sections 144.6 and 146.5—Classification of Wells

The proposed regulation would revise § 144.6(a) and § 146.5(a) by adding a paragraph (3) to move Class V radioactive waste disposal wells injecting below all USDWs into the Class I category. Such Class V wells, in fact, are similar to Class I wells in terms of their design, the nature of fluids that they inject, and their potential to endanger USDWs. In particular, like Class I wells, such radioactive waste injection wells inject below all USDWs and warrant the same level of control.

The Agency believes that all of these wells are located in Texas, which already regulates them as Class I wells. Existing Class V radioactive waste disposal wells, therefore, would not be subject to any additional regulatory requirements. However, the Agency believes that Class I requirements related to permitting, construction, operating, monitoring, reporting, mechanical integrity testing, area of review, and plugging and abandonment are needed to prevent any new radioactive waste disposal wells from endangering USDWs. The Agency, thus, proposes to reclassify Class V wells that inject radioactive waste below the lowermost USDW as Class I wells and subject them to the full set of existing Class I requirements. This approach is administratively simpler and more straightforward than keeping the wells in the Class V universe and developing identical requirements under the Class V program.

EPA wishes to clarify that this reclassification of Class V radioactive waste disposal wells does not affect the disposal of naturally occurring radioactive material (NORM) in Class II wells as part of oil and gas field operations. The injection of fluids associated with oil and natural gas production, including such fluids containing NORM, would continue to be regulated under existing Class II UIC requirements or under applicable regulations prescribed by the Primacy State agency.

3. Existing Regulations Being Reiterated or Replaced in 40 CFR Part 144, Subpart G

The existing description of the five classes of injection wells in § 144.6 would be reiterated, in a plain-English format, in § 144.82 in the new Subpart G. Similarly, the existing prohibition of fluid movement in § 144.12 would be reiterated in§ 144.80.

The existing inventory requirements for Class V wells in § 144.26(b)(1)(iii) and (e) and the description of when Class V injection is authorized by rule in § 144.24 would be deleted and moved to §§ 144.83 and 144.84, respectively, in the new Subpart G.

With only two exceptions, the substance of these existing requirements would not be changed. Only the language and format of the requirements would be revised to make them easier to understand. One of the changes is a proposed new requirement in § 144.83(a)(2)(iii) for owners or operators of wells in delineated source water protection areas, in DI Programs only, to submit new inventory information if they convert their well into a Class V industrial well as defined in today's proposal. An analogous inventory requirement for conversions to Class V motor vehicle waste disposal wells and cesspools is not needed because the rule would prohibit such well conversions, consistent with the ban on new motor vehicle waste disposal wells and cesspools. However, wells in source water protection areas could be converted to industrial wells after the original submittal of inventory information, and there would be no way for the UIC Program Director to learn about this potentially endangering situation if there is not a requirement to submit new inventory information. The other change calls for the submittal of inventory information for new wells prior to construction rather than prior to starting injection, as currently in § 144.26(e)(3). This change does not add any new burden or cost for well owners or operators. To the contrary, it is intended to help owners or operators avoid a situation in which they have incurred all the cost of well construction and then later, due to some unforeseen problem, are prohibited from using the well after they submit inventory information. Submitting the information prior to construction would give UIC Programs the opportunity to intervene or advise before any construction costs are wasted.

Just like the pre-closure notification requirement proposed for motor vehicle waste disposal wells, industrial wells, and large-capacity cesspools, EPA is proposing the new inventory requirement for well conversions in DI Programs because the Agency knows how these programs run and what the EPA Regions want and need to track the status of high-risk wells. Because EPA does not know if this same requirement is needed for all Primacy States (comparable or better mechanisms may already exist or could be developed), and is unsure if such a requirement may in fact create a burden that outweighs its benefits given each state's available resources, the Agency is not proposing to impose the new inventory requirement on Primacy States. However, as with the pre-closure notification requirement, EPA requests comment on this issue, including comments on the merits and potential impacts of extending the inventory requirement to Primacy States. EPA also requests comment on the merits of broadening the inventory requirement to well conversions outside of delineated source water protection areas. Based on public comment, EPA may broaden the inventory requirement in the final rule.

4. Part 145—State UIC Program Requirements

The Agency proposes to amend § 145.11 to be consistent with the proposed changes in 40 CFR Part 144. These proposed amendments would insert a set of new requirements in § 144.86 that state programs must have the legal authority to implement.

These proposed amendments to Part 145 are technical corrections to incorporate the proposed changes to 40 CFR Part 144. The corrections include a reference to the proposed new section and a redesignation of paragraphs to accommodate the new references.

VI. Regulatory Impact

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, Local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan program or the right and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action''. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Section 6(a)(3)(B) of EO 12866 requires that for all significant regulatory actions, the Agency prepare, and provide to OMB and the public, an assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions. Section 6(a)(3)(E) requires that the Agency identify for the public the substantive changes made between the draft submitted to OMB for review and the published proposal, and those changes made at the suggestion or recommendation of OMB.

Accordingly, the Agency has prepared an Economic Analysis (EA) of the Proposed Rule that assesses its costs. The Agency estimated the total costs of the rule under two proposals. Under Proposal 1, motor vehicle waste disposal wells are banned. Under Proposal 2 motor vehicle waste disposal wells are allowed to continue operating under permits. The Agency estimates the cost for Proposal 1 at approximately $54.5 million, with a possible range of $27 million to $85 million. Under Proposal 2, the total costs of the rule are estimated at approximately $44.5 million, with a possible range of $21 million to $70 million. The cost estimates under both proposals cover a wide range because the location of most affected Class V wells is unknown, and the boundaries of SWPAs have not yet been delineated. Using the multi-step process described below, the Agency estimated the number of wells that will potentially be affected by the proposed rule.

First, EPA compiled a list of SIC categories that captures the universe of facilities that could use motor vehicle waste disposal wells. Injection well inventory data from eight States were reviewed to determine the SIC categories associated with industrial wells. An SIC category was included in the list of affected industries if it appeared once in at least three of the eight State inventories. Starting with all facilities listed under each of the selected SIC categories, EPA eliminated those facilities that would be outside the scope of the proposed rule. These included facilities connected to sewers or discharging to surface water, facilities with wells closed under a past Administrative Consent Order and facilities located outside source water protection areas (SWPAs) delineated around community water systems and non-transient non-community water systems that use ground water as a source. EPA also eliminated 50 percent of facilities within currently delineated wellhead protection areas (WHPAs), and 50 to 75 percent of the remaining facilities in 10 states that explicitly ban or otherwise stringently control such wells. This step was taken because these wells are either already prohibited or are otherwise stringently controlled.

In order to assess the number of wells in SWPAs, EPA used the analytical assumption that states will delineate SWPAs by using areas of one-half mile radius around water supply wells for community water systems, and of one-quarter mile radius around water supply wells for non-transient non-community water systems. EPA based this assumption on the fact that many states used this approach to delineate WHPAs. It was also necessary to estimate the likely overlap between SWPAs and areas with Class V wells. Both Class V waste disposal wells and drinking water wells are likely to be located near populated areas, suggesting that more Class V wells will be located within SWPAs than if they were randomly distributed across a State. However, because drinking water wells are often located on the outskirts of a community and the SWPA is relatively small (one-quarter mile radius around non-transient systems and one-half mile radius around community water systems) SWPAs are likely to have fewer Class V wells than areas near the center of the community. EPA assumed that a SWPA is twice as likely to contain a Class V waste disposal well as an equal area of land outside a SWPA (excluding urban land). Because this assumption is difficult to verify, EPA also developed a range of cost estimates using the assumptions that SWPAs were either three times as likely or no more likely to contain Class V waste disposal wells as non-SWPAs (in the non-urban portion of each state). The upper and lower bounds of the estimated cost range shown above reflect these alternative assumptions.

To put this estimate into context, EPA estimates that about 9,420 waste disposal wells will be affected by the rule. Since there are 63,524 community and non-transient non-community ground water systems in the country, this means on average about one in seven SWPAs will have an affected Class V well. Using the upper bound estimate of 14,130 affected wells implies that about one in four SWPAs would have an affected well, while using the lower bound estimate of 4,710 affected wells implies that one in thirteen SWPAs would have an affected well. The Agency estimated that nationwide, about 2 percent of all motor vehicle waste disposal wells are located in SWPAs, with a range of 1 to 3 percent. (Note: For the baseline case of 2 percent, the percentage varies among states with a range between 0.14 percent and 29.22 percent.) EPA requests comment on its procedure for estimating the number of affected wells in SWPAs.

The Agency assumed that all states will complete their source water assessment programs on time. This assumption took into consideration that 44 states and 2 territories already have existing wellhead protection programs in place and that these states will be able to build on these programs to meet the source water protection requirements. The Agency also assumed the maximum possible time allowed for completing these assessments, including use of the full 180 day extension. Further, this proposal affects SWPAs for the 63,524 community and non-transient non-community ground water systems which comprise only 45% of all of the systems for which the state must complete a source water assessment and it is envisioned that states will complete these assessments first. Finally, states can use 10 percent of their FY 1997 allotment from Drinking Water State Revolving Funds, which totaled $1.2 billion to help this endeavor. EPA is proposing that the rule apply statewide if SWAPs are not completed on time, however, EPA realizes that the total cost of the rule could increase several fold if one or two highly populated states do not meet the deadline. The Agency requests comment on its assumption that all states will meet the deadline.

The process described above relating to compiling a list of SIC categories and then eliminating facilities outside the scope of the rule was also used to estimate the number of industrial facilities that might have an affected Class V well. The estimate was provided to EPA's Regional program managers who considered the results gross overestimates of the actual number of Class V industrial wells, based on their extensive field experience. It is likely that using SIC codes to estimate the number of industrial facilities with Class V wells is not reliable because it is difficult to specifically identify which industries within each classification are likely to use Class V wells and which wells are covered by this proposal, rather than being included in the other industrial well category that is still being studied. Also, EPA believes that industrial facilities generally are more likely to be located in sewered areas and to employ waste recycling measures than motor vehicle facilities. EPA Region 3 maintained extensive inspection records in their Well Activities Tracking, Evaluation and Reporting System II, covering a period from 1993 through 1996. An analysis of this data, which contains over 11,000 inspection records, revealed that approximately 75 percent of Class V waste disposal wells inspected were used by automotive service-related businesses. To be conservative, the Agency assumed that the remaining wells would be industrial, resulting in a ratio of 3 motor vehicle waste disposal wells for every one industrial well. Although this yields a much lower estimate for the number of affected industrial wells (2,355) than the estimate of potentially affected facilities derived from the SIC code list, EPA believes that using this data provides a more realistic picture of the number of industrials wells affected by the rule. EPA requests comment on this procedure.

Protecting the quality of Underground Sources of Drinking Water (USDWs) has many benefits. Foremost are the benefits to the health and welfare of consumers of the water, including children and other sensitive groups such as the elderly and the health-impaired for the present and for future generations. Related to potential health concerns are lost work and school time due to visits to physicians and the associated costs of providing medical monitoring and care. A protected high-quality source of drinking water also is important to a community's development and ability to attract employers. Another major benefit of protecting USDWs is avoiding the cost of responding to contamination. These avoided costs could include purchasing replacement water, installing point-of-use treatment, switching to alternative water supply systems, drilling replacement wells, building water conveyance structures from new sources, and/or installing permanent treatment systems. Some of these benefits are easier to quantify than others, but all are significant.

B. Children's Health Protection and Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to E.O. 13054 because this is not an economically significant regulatory action as defined by E.O. 12866 and because the proposed rule has included community, non community and non-transient water systems (which include schools and hospitals), EPA does not have reason to believe the rule concerns environmental health risks or safety risks that may have a disproportionate affect on children.

C. Paperwork Reduction Act

The information collection requirements in this rule are currently under development. The Information Collection Request (ICR) will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* upon completion. Two ICR documents are being prepared by EPA—one for each of the proposed alternative regulatory approaches for the motor vehicle waste disposal wells (ICR Nos. 1873.01 and 1874.01). Copies will be available from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. The information requirements will be published separately in the **Federal Register** when EPA submits them to OMB for review and approval. The ICRs are not effective until OMB approves them and EPA publishes an OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires EPA to explicitly consider the effect of proposed regulations on small entities. In accordance with Section 603 of the RFA, EPA has prepared an initial regulatory flexibility analysis (IRFA) that examines the impact of the proposed rule on small entities along with regulatory alternatives that could reduce that impact. The IRFA is available for review in the docket and is summarized below.

The RFA's definition of small entity includes small businesses, small governmental jurisdictions and small not-for-profit organizations. This proposed rule would primarily affect small business entities. To define small business entities, EPA used the Small Business Administration's (SBA) industry-specific criteria published in 13 CFR 121. SBA size standards have been established for each type of economic activity under the Standard Industrial Classification (SIC) system. These criteria are usually expressed in terms of number of employees or dollar volume of sales.

The proposed rule would affect the owners and operators of three categories of Class V wells in source water protection areas delineated for community water systems and non-transient non-community water systems that use ground water as a source: motor vehicle waste disposal wells, industrial waste disposal wells, and large-capacity cesspools. Because it is infeasible to assess the prevalence of Class V waste disposal well use in every industry, EPA developed a list of SIC categories which it believes captures the universe of facilities that possibly could use motor vehicle and industrial waste disposal wells. Injection well inventory data from eight states (Illinois, Kansas, Montana, Nebraska, New Hampshire, Pennsylvania, Virginia and West Virginia) were reviewed to determine the SIC categories associated with industrial and motor vehicle waste disposal wells. An SIC category was included in the list of affected industries if it appeared once in at least three of the eight state inventories.

EPA then pared this list down to reflect the number of facilities that may be actually affected by the proposed rule. EPA eliminated from the list those facilities that would be outside the scope of the rule, including: facilities connected to sewers (which presumably would not dispose of wastewater in injection wells); facilities located in states that have already banned types of Class V wells that would be targeted by the proposal; facilities injecting wastewater likely to qualify as hazardous waste (in which case, the well is a Class IV well and already banned under the existing UIC regulations); and facilities located outside source water protection areas delineated around community water systems and non-transient non-community water systems that use ground water (only wells inside such areas would be subject to the rule, as proposed).

Although states have the flexibility to delineate their source water protection areas in a variety of ways, EPA believes that such areas delineated for ground water supply sources will be similar to wellhead protection areas already delineated in most states. A total of 44 states and 2 Territories have EPA-approved Wellhead Protection Programs. Most of these programs have defined wellhead protection areas using a fixed radius around water supply wells.

Given this situation, EPA estimated the number of facilities likely to fall within source water protection areas by estimating the number of facilities likely to fall within a fixed radius of existing supply wells. Based on data from the State Wellhead Protection Plans, it was assumed that the typical protection area will be a half-mile radius around community ground water supply wells and a quarter-mile radius around non-transient non-community ground water supply wells. Using these areas and current data on the number of supply wells in each state, EPA estimated the land area in each state likely to fall within a source water protection area targeted by the proposal. That area was then divided by the total land area in the state to estimate the fraction of land in each state likely to be in a source water protection area. As described earlier in this section, the number of potentially affected facilities was estimated by multiplying that fraction by the total number of facilities in each state estimated to have a Class V motor vehicle waste disposal well or industrial well that would be subject to the proposal. Then, this number was doubled to account for the assumption that SWPA are twice as likely to contain a Class V well as an equal area outside of a SWPA. EPA specifically requests comments on this approach, which is described in more detail in the economic analysis available in the docket, as well as suggestions and data that could be used for other approaches.

Once a final list of affected facilities was determined in this manner, EPA estimated which of the affected businesses are primarily small businesses using SBA's size thresholds. Of the 57 SIC categories included in the analysis, 50 of them are made up primarily of small businesses (i.e., at least 95 percent of the facilities fall below the SBA size threshold) and 9,176 of the 9,422 affected entities are considered small businesses.

The proposed rule would require affected Class V motor vehicle waste disposal wells to either close or get a permit that requires waste fluids to meet MCLs at the point of injection, would require affected industrial waste disposal wells to close or meet MCLs at the point of injection, and would ban affected large-capacity cesspools. EPA has determined that these requirements might have a significant economic impact on a substantial number of small entities that use either motor vehicle waste disposal wells or industrial waste disposal wells located in areas delineated for community water systems or non-transient non-community water systems that use groundwater as a source. The basis for this decision is as follows.

First, if the proposed rule bans Class V motor vehicle waste disposal wells while allowing industrial waste disposal wells to continue operating under specific conditions, about 4,536 to 4,794 (49 to 52 percent) of the affected small entities would incur annualized compliance costs that represent more than 1 percent of their sales (or income for small governments). Furthermore, about 2,036 to 2,160 (22 to 24 percent) of the affected small entities would incur costs that represent more than 3 percent of their sales (or income for small governments).

Second, if the proposed rule allows existing motor vehicle waste disposal wells to continue to operate under permits and industrial waste disposal wells to continue operating under specific conditions, about 4,118 to 4,448 (45 to 48 percent) of the affected small entities would incur costs that represent more than 1 percent of their sales (or income for small governments); whereas, about 1,644 to 1,836 (18 to 20 percent) of the affected small entities would incur costs that represent more than 3 percent of their sales (or income for small governments).

To reduce the impact on small businesses, EPA has attempted to keep permitting, reporting, and other administrative requirements to a minimum to provide regulatory relief to small entities while protecting drinking water supplies.

As discussed above in section II.C.6 of this preamble, EPA conducted outreach and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the affected small entities under section 609(b) of the RFA as amended by the SBREFA of 1996. Today's notice incorporates all of the recommendations made by this Panel in an effort to minimize impacts to small businesses. For example, today's notice offers a co-proposal and an alternative to the proposed ban of motor vehicle waste disposal wells that would give owners or operators of such wells greater flexibility. It also gives UIC Program Directors discretion to extend the deadline for complying with the new requirements when more time is needed by owners or operators, and proposes flexibility to regulate certain drainage wells at commercial and industrial sites like stormwater drainage wells rather than industrial wells, which would be subject to more stringent standards. In addition, today's proposal requests comment on several issues raised by small entity commenters on which the Small Business Advocacy Review Panel did not reach consensus, including the adequacy of the non-regulatory approach contained in the 1995 proposal, the possibility of allowing injectate to exceed an MCL at the point of injection provided it does not endanger USDWs. See section II.C.6 above for a more complete list and description of changes made to today's proposal in response to recommendations from the Small Business Advocacy Review Panel.

E. Enhancing the Intergovernmental Partnership

To reduce the burden of Federal regulations on state and small governments, the President issued Executive Order 12875, entitled Enhancing the Intergovernmental Partnership, on October 28, 1993 (48 FR 58093). Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or Tribal government unless the Federal government provides the necessary funds to pay the direct costs incurred by the state, local or Tribal government or EPA provides to the Office of Management and Budget a description of the extent of the Agency's prior consultation and written communications with elected officials and other representatives of affected state, local and Tribal governments, the nature of their concerns, and an Agency statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates''. Moreover, because there is an insignificant number of Class V wells owned by state, local and Tribal governments in SWPAs, this proposed rule does not have significant or unique affects on state, local and Tribal governments.

F. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Specifically, the costs to the regulated community is estimated at approximately $55 million for the option in which motor vehicle wells are required to close and $45 million for the option in which motor vehicle well owners can apply for a permit. The cost estimates to state governments are still being refined but are not expected to exceed several million dollars. Thus, today's rule is not subject to the requirements of section 202 of the UMRA.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through MOB, an explanation of the reasons for not using such standards.

The Agency does not believe that this proposed rule addresses any technical standards subject to the NTTAA. A commenter who disagrees with this conclusion should indicate how the Notice is subject to the Act and identify any potentially applicable voluntary consensus standards.

H. Environmental Justice

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. The Agency believes that today's proposal provides equal public health protection to communities irrespective of their socio-economic condition and demographic make-up.

I. Effect on States With Primacy

According to regulations at 10 CFR 145.32, Primacy States would have 270 days from the effective date of the final rule to submit to EPA documents demonstrating that proper legal authority and regulations exist to administer and enforce the new requirements for Class V cesspools, motor vehicle waste disposal wells, and industrial wells. Depending on the existing state program and authorities, these documents could include a modified program description that outlines the structure, coverage, and processes of the state's Class V UIC program. Revisions to State UIC Programs needed to incorporate the new requirements would be subject to public notice and comment requirements.

Reasonable efforts by states to implement and enforce the new requirements as part of their ongoing programs should not be burdensome, because the new requirements are primarily directed toward well owners and operators, not UIC program authorities. For example, if finalized, the ban on motor vehicle waste disposal wells should be self-implementing by owners or operators, with no new reporting, inspection, or other administrative requirements for Primacy States (the new requirements for owners or operators to submit pre-closure notification is reserved for wells in DI Programs). However, if the proposal to allow owners or operators of motor vehicle waste disposal wells to apply for a permit is finalized, there would be an increased burden to states that choose to adopt this option to review the permit application and site-specific details for each facility wishing to keep its motor vehicle waste disposal well open. Based on this review, states would have to either deny the application or develop and enforce permit requirements to make sure the well does not endanger USDWs.

List of Subjects

40 CFR Parts 144 and 146

Environmental protection, Ground water pollution control, Hazardous waste, Shallow disposal wells, Water supply.

40 CFR Part 145

Environmental protection, Water supply.

Dated: July 17, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 chapter I of the Code of Regulations is proposed to be amended as follows:

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for part 144 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 144.1 is amended by adding a new paragraph (f)(1)(vii), revising paragraphs (g)(1) introductory text, (g)(1)(iii), (g)(1)(iv) and (g)(2)(ii), removing paragraph (g)(2)(iii), redesignating paragraphs (g)(2)(iv) and (v) as (g)(2)(iii) and (iv), and revising newly designated paragraph (g)(2)(iv) to read as follows:

§ 144.1 Purpose and scope of part 144.

* * * * *

(f)(1) * * *

(vii) Subpart G sets forth requirements for owners and operators of Class V injection wells.

* * * * *

(g) * * *

(1) *Specific inclusions.* The following wells are included among those types of injection activities which are covered by the UIC regulations. (This list is not intended to be exclusive but is for clarification only.)

* * * * *

(iii) Any well used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste. This includes the disposal of hazardous waste into what would otherwise be septic systems and cesspools, regardless of their capacity.

(iv) Any septic system, cesspool, or other well, used solely for the subsurface emplacement of sanitary waste, having the capacity to serve 20 persons or more per day.

(2) * * *

(ii) Any septic system, cesspool, or other well used solely for the subsurface emplacement of sanitary waste, having the capacity to serve fewer than 20 persons a day.

* * * * *

(iv) Any dug hole, drilled hole, or bored shaft which is not used for the subsurface emplacement of fluids.

* * * * *

3. Section 144.3 is amended by adding new definitions in alphabetical order for ''cesspool,'' ''drywell,'' ''improved sinkhole,'' ''sanitary waste,'' ''septic system,'' and ''subsurface fluid distribution system,'' and by revising the definitions of ''well'' and ''well injection'' to read as follows:

§ 144.3 Definitions.

* * * * *

Cesspool means a ''drywell'' that receives solely untreated sanitary waste, and which sometimes has an open bottom and/or perforated sides.

* * * * *

Drywell means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

* * * * *

Improved sinkhole means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

* * * * *

Sanitary waste means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities provided the waste is not mixed with industrial waste.

* * * * *

Septic system means a ''well'' that is used solely to emplace sanitary waste below the surface and is comprised of a septic tank and subsurface fluid distribution system.

* * * * *

Subsurface fluid distribution system means an assemblage of perforated pipes, drain tiles, or other mechanisms intended to distribute fluids below the surface of the ground.

* * * * *

Well means:

(1) A bored, drilled, or driven shaft;

(2) A dug hole whose depth is greater than the largest surface dimension;

(3) An improved sinkhole; or

(4) A subsurface fluid distribution system.

Well injection means the subsurface emplacement of fluids through a well.

4. Section 144.6 is amended by adding a new paragraph (a)(3) and revising paragraph (e) to read as follows:

§ 144.6 Classification of wells.

(a) * * *

(3) Radioactive waste disposal wells which inject fluids below the lowermost formation containing an underground source of drinking water within one quarter mile of the well bore.

* * * * *

(e) *Class V.* Injection wells not included in Class I, II, III, or IV. Specific types of Class V injection wells are described in § 144.81 in subpart G of this part.

5. Section 144.24 is revised to read as follows:

§ 144.24 Class V wells.

A Class V injection well is authorized by rule, subject to the conditions in § 144.84 in subpart G of this part.

§ 144.26 Amended

6. Section 144.26 is amended by removing paragraphs (b)(1)(iii) and (e).

7. Subpart G is added to read as follows:

Subpart G—Requirements for Owners and Operators of Class V Injection Wells

Sec.
144.79 General

Definition of Class V Injection Wells

144.80 What is a Class V injection well?
144.81 Does this subpart apply to me?

Requirements for All Class V Injection Wells

144.82 What must I do to protect underground sources of drinking water?
144.83 Do I need to notify anyone about my well?
144.84 Do I need to get a permit?

Additional Requirements for Class V Cesspools, Motor Vehicle Waste Disposal Wells, and Industrial Wells

144.85 Do these additional requirements apply to me?
144.86 What are the additional requirements?
144.87 How do I close my Class V injection well?

Subpart G—Requirements for Owners and Operators of Class V Injection Wells

§ 144.79 General

This subpart tells you what requirements apply to you if you own or operate a Class V injection well. You may also have to follow additional requirements listed in the rest of part 144. Where they may apply, these other requirements are referenced rather than repeated below. The requirements described in this subpart and elsewhere in part 144 are to protect underground sources of drinking water and are part of the Underground Injection Control (UIC) Program established under the Safe Drinking Water Act. This subpart is written in a special format to make it easier to understand the regulatory requirements. Like other EPA regulations, it establishes enforceable legal requirements.

Definition of Class V Injection Wells

§ 144.80 What is a Class V injection well?

As described in more detail in § 144.6 in subpart A, injection wells are defined as follows:

(a) Class I wells inject hazardous, industrial, or municipal wastes beneath the lowermost formation containing an underground source of drinking water (USDW) within one-quarter mile of the well;

(b) Class II wells inject fluids connected with oil or natural gas recovery or production or for the storage of liquid hydrocarbons;

(c) Class III wells inject fluids for the solution mining of minerals; and

(d) Class IV wells inject hazardous or radioactive waste into or above formations containing a USDW within one-quarter mile of the well.

(e) Class V wells include all other injection wells that do not fit one of the classes listed above. Typically, Class V wells are shallow wells used to place a variety of fluids directly below the land surface. However, if the fluids you place in the ground qualify as a hazardous waste under the Resource Conservation and Recovery Act (RCRA), your well is either a Class I or Class IV well, not a Class V well. Specific types of Class V wells are described in § 144.81.

§ 144.81 Does this subpart apply to me?

This subpart applies to you if you own or operate one of the following well types, all of which qualify as Class V wells:

(a) *Motor vehicle waste disposal wells* receive or have received fluids from vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work. Fluids disposed in these wells may contain organic and inorganic chemicals in concentrations that exceed the maximum contaminant levels (MCLs) established by the primary drinking water regulations (see 40 CFR part 142). These fluids also may include waste petroleum products and may contain contaminants, such as heavy metals and volatile organic compounds, which pose risks to human health.

(b) *Industrial wells* are used to inject non-hazardous industrial or commercial waste and fluids other than those described for the other types of Class V wells. These include but are not limited to:

(1) Wastewater from petroleum refineries, chemical manufacturers, dry cleaners, electric component manufacturers, small machine manufacturers, die and tool manufacturers, commercial printers, asphalt manufacturers, and other industrial operations; or

(2) Spills from industrial or commercial process areas, storage areas, or loading docks, or drainage highly contaminated by large spills from such areas. This is different than routine stormwater runoff. A well intended for stormwater management that may have the potential to receive insignificant amounts of waste due to unintentional small volume leaks, drips, or spills, and that cannot reasonably be separated from potential sources of contamination qualify as drainage wells, as described below.

(3) Wastewater from carwashes specifically set up to perform engine or undercarriage washing. This does not include wastewater from manual carwashes where people use hand-held hoses to wash the exterior of their cars, trucks, or other vehicles. Wells at such manual carwashes, as well as other car washes not specifically set up to perform engine or undercarriage washing, qualify as other industrial wells. This category includes all other industrial or commercial wells that do not meet the criteria for other classes of wells or for other Class V industrial wells.

(c) *Cesspools* are drywells, which sometimes have an open bottom and/or perforated sides, used to dispose of untreated sanitary waste. They are typically located in areas not served by sanitary sewers. This subpart applies to you only if your cesspool has the capacity to dispose of sanitary waste from 20 persons or more per day (you are exempt from this subpart and from the federal Underground Injection Control program if it is smaller than that). However, if you use your cesspool to dispose of motor vehicle waste or industrial waste, either by themselves or together with sanitary waste, your well qualifies as a motor vehicle waste disposal well or an industrial well rather than a cesspool.

(d) *Septic systems* are septic tanks and fluid distribution systems, such as leachfields or wells, used to dispose of sanitary waste only. Like cesspools, this subpart applies to you only if your septic system has the capacity to dispose of sanitary waste from 20 persons or more per day. However, if you use your septic system to dispose of motor vehicle waste or industrial waste, either by themselves or together with sanitary waste, your well qualifies as a motor vehicle waste disposal well or an industrial well rather than a septic system.

(e) *Drainage wells* consist of a variety of wells used to drain surface and subsurface fluids. These wells include agricultural drainage wells that receive irrigation or stormwater runoff. Drainage wells also include stormwater runoff wells in municipalities. A well at a commercial or industrial site also qualifies as a drainage well, not an industrial well, if it is intended for stormwater management, even if it may have the potential to receive insignificant amounts of waste due to unintentional small volume leaks, drips, or spills, as long as it cannot reasonably be separated from potential sources of contamination. This category does not include mine drainage wells. Mine backfill and drainage wells are defined in paragraph (j) of this section.

(f) *Beneficial use wells* are used to improve either the quality or flow of aquifers or to provide some other ground water management benefit. They include aquifer recharge wells used to re-supply dwindling ground water resources; aquifer storage and recovery wells used to place excess water in the subsurface during periods of high flow and then withdraw the water later when it is needed; subsidence control wells used to inject fluids to prevent the land surface from sinking or settling; injection wells used to help clean up contaminated ground water, either by injecting solutions to neutralize contamination or to return previously contaminated ground water that has been treated; and wells that inject water to control the intrusion of salt water in coastal areas into freshwater aquifers.

(g) *Fluid return wells* are used to inject fluids associated with the production of geothermal energy for space heating or electric power, the operation of a heat pump, aquaculture, or the extraction of minerals from produced fluids. For example, wells that inject spent geothermal fluids, following extraction of the heat energy, are used to recharge geothermal reservoirs and avoid surface discharges. Other examples of fluid return wells include electric power wells that inject fluids from electric power generation facilities, and wells used to inject spent brines after the extraction of halogens (e.g., bromine) or their salts.

(h) *Sewage treatment effluent wells* are used to inject treated effluent from publicly owned treatment works or treated effluent from privately owned treatment facilities receiving solely sanitary waste. If you inject effluent from a privately owned treatment facility that receives industrial waste, your well qualifies as an industrial well rather than a sewage treatment effluent well. Also, if you own or operate a well that injects sewage treatment effluent beneath the lowermost formation containing a USDW, it qualifies as a Class I well rather than a Class V well.

(i) *Experimental technology wells* include any well that is an integral part of an unproven subsurface injection technology other than waste disposal, such as in situ coal liquification, in situ oil shale retorting, tracer studies, and secondary water recovery (e.g., using air to force underground water bound in the unsaturated zone into the saturated zone where it can be recovered).

(j) *Mine backfill and drainage wells* are used to place mine drainage or slurries of sand, gravel, cement, mill tailings/refuse, fly ash, or other solids into underground mines, whether what is injected is a radioactive waste or not. Mine backfill and drainage wells may serve a variety of purposes, including subsidence prevention, filling dangerous mine openings, disposing of wastes from mine operations, and fire control.

(k) *In-situ recovery and solution mining wells* are used to inject fluids for the purpose of producing energy or minerals. Wells used for in-situ recovery of lignite, coal, tar sands, oil shale, and geothermal energy are designed to deliver particular solutions (such as water, air, oxygen, solvents, combustibles, or explosives) into subsurface target formations to liberate the desired products that can be brought to the surface via recovery wells. Solution mining wells use injection and recovery techniques to bring minerals from underground deposits to the surface. Solution mining of conventional mines such as stopes leaching is included in Class V. However, in-situ production of uranium or other metals from ore bodies that have not been conventionally mined is included in Class III (see § 144.6(c)). Similarly, mining of sulfur by the Frasch process is included in Class III, not Class V.

(l) *Other industrial wells* inject industrial and commercial wastes, which either contain lower concentrations of contaminants or are more like sanitary waste than wastes injected into Class V industrial wells described in paragraph (b) of this section. The category of other industrial wells was created to exclude these wells from the additional requirements in § 144.85 that apply to industrial wells. There are four types of other industrial wells:

(1) Wells used to inject fluids from carwashes that are not specifically set up to perform engine or undercarriage washing (including, manual carwashes where people use hand-held hoses to wash the exterior of their vehicles);

(2) Wells used to inject noncontact cooling water that contains no additives and has not been chemically altered, meaning that it has not been mixed with or come into contact with a contaminated waste stream;

(3) Wells used to inject fluids from laundromats where no onsite dry cleaning is performed or where no organic solvents are used for laundering; and

(4) Wells used to inject wastewater from food processing operations.

Requirements for all Class V Injection Wells

§ 144.82 What must I do to protect underground sources of drinking water?

If you own or operate any type of Class V well listed above, the regulations below require that you cannot allow movement of injection fluid into USDWs that might cause endangerment, you must properly close your well when you are through using it, you must comply with other federal UIC requirements in 40 CFR parts 144 through 147, and you must comply with any other measures required by your state or EPA Regional Office. You also must submit basic information about your well, as described in § 144.83.

(a) *Prohibition of fluid movement.* (1) As described in § 144.12(a), your injection activity cannot allow the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of the primary MCLs in 40 CFR part 142 or may otherwise adversely affect the health of persons. This prohibition applies to your well construction, operation, maintenance, conversion, plugging, abandonment, or any other injection activity.

(2) If the Director of the UIC Program in your state or EPA Region learns that your injection activity may endanger USDWs, he or she may require you to close your well, require you to get a permit, or require other actions listed in § 144.12(c), (d), or (e).

(b) *Closure requirements.* Prior to abandoning your well, you must close the well in a manner that complies with the above prohibition of fluid movement. Also, you must dispose or otherwise manage any soil, gravel, sludge, liquids, or other materials removed from or adjacent to your well in accordance with all applicable Federal, state, and local regulations and requirements.

(c) *Other requirements in parts 144 through 147.* Beyond this subpart, you are subject to other UIC Program requirements in 40 CFR parts 144 through 147. While most of the relevant requirements are repeated or referenced in this subpart for convenience, you need to read these other parts to understand the entire UIC Program.

(d) *Other State or EPA requirements.* 40 CFR parts 144 through 147 define minimum federal UIC requirements. EPA Regional Offices administering the UIC Program have the flexibility to establish additional or more stringent requirements based on the authorities in parts 144 through 147, if believed to be necessary to protect USDWs at a local level. States can have their own authorities to establish additional or more stringent requirements if needed to protect USDWs. You must comply with these additional requirements, if any exist in your area. Contact the UIC Program Director in your state or EPA Region to learn more.

§ 144.83 Do I need to notify anyone about my well?

Yes, you need to provide basic ''inventory information'' about your well, if you haven't already. You also need to provide any other information that your UIC Program Director requests in accordance with the provisions of the UIC regulations.

(a) *Inventory requirements.* Unless you know you have already satisfied the inventory requirements in § 144.26 that were in effect prior to the issuance of this subpart G, and you have not since converted your well into an industrial well, you must give your UIC Program Director certain information about yourself and your injection operation.

(1) The requirements differ depending on your well status and location, as described in the following table:

If your well is * * *	And you're in one of these locations (''Primacy'' States, which run the Class V UIC Program) * * * *Alabama, Arkansas, Commonwealth of Northern Mariana Islands, Connecticut, Delaware, Florida, Georgia, Guam, Idaho, Illinois, Kansas, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, Texas, Utah, Vermont, West Virginia, Wisconsin, Washington, or Wyoming*	Or you're in one of these locations (''Direct Implementation'' or DI Programs, where EPA runs the Class V UIC Program) * * * *Alaska, American Samoa, Arizona, California, Colorado, Hawaii, Indiana, Iowa, Kentucky, Michigan, Minnesota, Montana, New York, Pennsylvania, South Dakota, Tennessee, Virginia, Virgin Islands, Washington, DC, or any Indian Country*
New (construction not yet started).	* * * then you must contact your State UIC Program to determine what you must submit and by when.	* * * then you must submit the inventory information described in (a)(2) of this section (below) prior to constructing your well.
Existing (construction underway or completed).	* * * then you must contact your State UIC Program to determine what you must submit and by when.	* * * then you must cease injection and submit the inventory information. You may resume injection 90 days after you submit the information unless the UIC Program notifies you that injection may not resume or may resume sooner.

(2) If your well is in a DI Program State, here is the information you must submit to EPA:

(i) No matter what type of Class V well you own or operate, you must submit at least the following information for each Class V well: facility name and location; name and address of legal contact; ownership of facility; nature and type of injection well(s); and operating status of injection well(s).

(ii) You must submit the above information plus the additional information described here if you own or operate an industrial well, a mine backfill and drainage well, a fluid return well, or an experimental technology well. The UIC Program Director may also require the owners and operators of other types of Class V wells to submit this additional information. In these cases, you must provide a listing of all Class V wells that you own or operate along with the following information for each well (a single description of wells at a single facility with substantially the same characteristics is acceptable as long as the number of wells and their location is described):

(A) Location of each well or project given by Township, Range, Section, and Quarter-Section, or by latitude and longitude to the nearest second, according to conventional practice in your state;

(B) Date of completion of each well;

(C) Identification and depth of the underground formation(s) into which each well is injecting;

(D) Total depth of each well;

(E) Construction narrative and schematic (both plan view and cross-sectional drawings);

(F) Nature of the injected fluids;

(G) Average and maximum injection pressure at the wellhead;

(H) Average and maximum injection rate; and

(I) Date of the last inspection.

(iii) If you convert your well into an industrial well any time after you submit the inventory information listed in paragraph (a)(2)(i) and (ii), you must resubmit the information noting the changes in your well type, status, and operations.

(3) Regardless of whether your well is in a Primacy State or DI Program, you are responsible for knowing about, understanding, and complying with these inventory requirements.

(b) *Information in response to requests.* If you are in one of the DI Programs listed in the table above, the UIC Program Director may require you to submit other information believed necessary to protect underground sources of drinking water.

(1) The Director may require you to:

(i) Perform ground water monitoring and periodically submit your monitoring results;

(ii) Analyze the fluids you inject and periodically submit the results of your analyses;

(iii) Describe the geologic layers through which and into which you are injecting; and

(iv) Conduct other analyses and submit other information, if needed to protect underground sources of drinking water.

(2) If the Director requires this other information, he or she will request it from you in writing, along with a brief statement on why the information is required. This written notification also will tell you when to submit the information.

(3) You are prohibited from using your well if you fail to comply with the written request within the time frame specified. You can start injecting again only if you get a permit.

§ 144.84 Do I need to get a permit?

No, as long as certain conditions do not apply to you.

(a) *General authorization by rule.* With certain exceptions listed in paragraph (b) of this section, your Class V injection activity is ‘‘authorized by rule,’’ meaning you have to comply with all the requirements of this subpart and the rest of the UIC Program but you don’t have to get an individual permit. Well authorization expires once you have properly closed your well, as described in § 144.82(b).

(b) *Circumstances in Which Permits or other Action is Required.* If you fit into one of the categories listed below, your Class V well is no longer authorized by rule. This may mean that you have to get a permit, if you want to keep using your well. You can find out by contacting the UIC Program Director in your state or EPA Region if this is the case. Subpart D of this part tells you how to apply for a permit and describes other aspects of the permitting process. Subpart E of this part outlines some of the requirements that might apply to you if you get a permit.

(1) You fail to comply with the prohibition of fluid movement standard in § 144.12(a) and described in § 144.82(a) above (in which case, you have to get a permit, close your well, and/or comply with other conditions determined by the UIC Program Director in your state or EPA Region);

(2) *Proposal 1:* You own or operate a Class V cesspool or motor vehicle waste disposal well in a source water protection area (in which case, you must close your well as specified in the additional requirements below);

(2) *Proposal 2:* You own or operate a Class V cesspool in a source water protection area (in which case, you must close your well as specified in the additional requirements below) or a Class V motor vehicle waste disposal well in a source water protection area (in which case, you must either close your well or get a permit as specified in the additional requirements below);

(3) You own or operate a Class V industrial well in a source water protection area, and the fluid you put down your well has chemical concentrations above the drinking water MCLs (in which case, you must either close your well or make sure your waste fluids meet the MCLs at the point of injection as specified in the additional requirements below);

(4) You are specifically required by the UIC Program Director in your state or EPA Region to get a permit. In which case, rule authorization expires upon the effective date of the permit issued, or you are prohibited from injecting into your well upon:

(i) Failure to submit a permit application in a timely manner as specified in a notice from the Director, or

(ii) Upon the effective date of permit denial;

(5) You have failed to submit inventory information to your UIC Program Director, as described in § 144.83(a) (in which case, you are prohibited from injecting into your well until you comply with the inventory requirements); or

(6) You received a request from your UIC Program Director for additional information under § 144.83(b), and have failed to comply with the request in a timely manner (in which case, you are prohibited from injecting into your well until you get a permit).

Additional Requirements for Class V Cesspools, Motor Vehicle Waste Disposal Wells, and Industrial Wells

§ 144.85 Do these additional requirements apply to me?

(a) Whether and when these additional requirements apply to you depends on the location of your Class V cesspool, motor vehicle waste disposal well, or industrial well relative to delineated source water protection areas, and on the status of your state’s source water assessment program.

(1) If the source water assessment program in your state is complete before May 2003 (i.e., the state program has been approved by EPA and all its local assessments for community and

nontransient noncommunity water systems have been completed. This means that all local assessments within a state have performed the three required steps of delineation, source identification, and susceptibility analysis), the additional requirements apply to you only if your well is in a source water protection area delineated for community water systems and non-transient non-community water systems that use ground water as a source. The additional requirements start applying to you 90 days after the local program that covers you is completed. The UIC Program Director may extend this deadline for up to one year if you have to hook up to a sanitary sewer or install new treatment systems in order to comply with the additional requirements.

(2) If the source water assessment program in your state is not complete, and it is before May 2003, the additional requirements apply to you only if your well is in a source water protection area delineated by a complete local program for community water systems and non-transient non-community water systems that use ground water as a source. The additional requirements start applying to you 90 days after your local program is completed. Again, the UIC Program Director may extend this deadline for up to one year if you have to hook up to a sanitary sewer or install new treatment systems in order to comply with the additional requirements.

(3) If the source water assessment program in your state is not complete, and it is after May 2003 (i.e., the state program has not been approved by EPA or the state has not completed its local assessments for community and nontransient noncommunity water systems), the additional requirements apply to you regardless of the location of your well relative to delineated source water protection areas and regardless of the status of any local program that covers your area. In other words, the additional requirements apply statewide.

(b) *Source water assessment program*. This is a new approach to protecting drinking water sources, specified in the 1996 Amendments to the Safe Drinking Water Act. States must prepare and submit for EPA approval a program to:

(1) Delineate the boundaries of areas providing source waters for public water systems (called ''source water protection areas'');

(2) Inventory significant potential sources of contaminants of concern in such areas, to the extent practical; and

(3) Determine the susceptibility of public water systems in the delineated areas to contaminants of concern.

(c) *Source water protection area.* A source water protection area is a geographic area defined by a state as supplying ground water and/or surface water for a public drinking water system. Such an area receives priority for the protection of public drinking water supplies. The additional requirements in § 144.86 apply to you only if your Class V well is in an area delineated for ground water (rather than surface water) and for either community water systems or non-transient non-community water systems. In many states, these areas will be the same as Wellhead Protection Areas that have been delineated previously.

(d) *Community water system.* A community water system is a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(e) *Non-transient non-community water system.* A public water system that is not a community water system and that regularly serves at least 25 of the same people over six months a year. These may include systems that provide water to schools, day care centers, government/military installations, manufacturers, hospitals or nursing homes, office buildings, and other facilities.

(f) *Delineation.* States may define the boundaries of a source water protection area in a variety of ways. Regardless of the methods used, the delineation will be presented in a format that is understandable to the public so you will know if your Class V injection well is in a delineated source water protection area or not. In most instances, maps will be used to show the boundaries of the source water protection area.

(g) *How to find out if your well is in a source water protection area.* States are supposed to make their delineations widely available to the public through a variety of methods right after the results are done. You can find out if your Class V well is in a source water protection area by contacting the state or local agency responsible for source water protection in your area. You may call the Safe Drinking Water Hotline at 1–800–426–4791 to find out who to call in your state for information. Alternatively, you may be able to get this information by calling a special telephone number in your state (if your state has set one up), calling your local water supplier, calling the EPA Program Office, following your local news (paper, radio and TV), looking on the Internet, or getting a copy of your state's Clean Water Act Section 305(b) report. Your state may also send you information in your water bill, send each household a newsletter or flyer, advertise the availability of information in a local newspaper, and develop a database of information that people can access through a computer homepage. Even though you may get information from these and other sources, the state office responsible for implementing the source water assessment program in your area is the source that makes the final and official determination of boundaries for source water protection areas.

(h) *When a state does not have a complete program by May 2003.* The Source Water Assessment and Protection Program requires states to delineate priority areas for the protection of their public drinking water systems. If states do not do this, there is no way to tell if your large-capacity cesspool, motor vehicle waste disposal well, or industrial well is in an area that overlies ground water serving as a drinking water supply source. In order to assure protection of public drinking water supplies, therefore, these requirements will apply statewide if a state has failed to complete its source water delineations and assessments by May 2003. The additional requirements apply statewide permanently, even if the state eventually completes its source water delineations and assessments sometime after May 2003.

(i) *Changes in your status.* Over time, three changes in your state's source water assessment program might occur and affect whether the additional regulations apply to you:

(1) Before May 2003, if the local source water assessment program responsible for your area becomes completed, the additional regulations apply to you if your well is in a source water protection area delineated for community water systems and non-transient non-community water systems that use ground water as a source. The additional regulations start applying to you 90 days after your local program is completed. The UIC Program Director responsible for your area may extend this deadline for up to one year if you have to hook up to a sanitary sewer or install new treatment systems in order to comply with the additional requirements.

(2) After May 2003, if your state fails to complete its source water program by that time (meaning all of the local programs in your state are not complete), the additional regulations apply to you even if your well is not in a delineated source water protection area.

(3) After May 2003, if your state's source water program was completed before that time, your state may delineate a source water protection area

for ground water supplying a new community water system or a new non-transient non-community water system that includes your Class V injection well. Also, your state may extend the boundaries of a source water protection area delineated previously. This would make the additional regulations apply to you if your well is in such an area. The additional regulations start applying to you 90 days after the local program responsible for the new or extended area is completed. The UIC Program Director responsible for your area may extend this deadline for up to one year if you have to hook up to a sanitary sewer or install new treatment systems in order to comply with the additional requirements.

(j) *Application of the additional requirements outside of source water protection areas.* EPA expects and strongly encourages states to use existing authorities in the UIC program to take whatever measures are needed to ensure Class V wells are not endangering USDWs in any other areas outside of delineated source water protection areas (e.g., areas overlying sole-source aquifers; highly productive aquifers supplying private wells; continuous and highly productive aquifers at points distant from public water supply wells; areas where water supply aquifers are recharged; karst aquifers that discharge to surface reservoirs serving as public water supplies; susceptible or sensitive hydrogeologic settings, such as glacial outwash deposits, eolian sands, and fractured volcanic rock; and areas of special concern selected based on a combination of factors, such as hydrogeologic sensitivity, prevailing land-use practices, and documented ground water contamination). Such measures could include, if believed to be necessary by a UIC Program Director, applying the additional requirements below to other areas and/or other types of Class V wells. Therefore, the Director may apply the additional requirements to you, even if you do not meet the criteria in paragraph (a) of this section.

§ 144.86 What are the additional requirements?

The additional requirements are specified in the following table:

ADDITIONAL REQUIREMENTS FOR LARGE-CAPACITY CESSPOOLS IN SOURCE WATER PROTECTION AREAS

[See § 144.85 to determine if these additional requirements apply to you]

If your cesspool is * * * (well Status)	Then you * * * (requirement)	By * * * (deadline)
Existing (operational or under construction by [insert effective date].	Must close the well	[insert date five years from effective date].
	Must notify the UIC Program Director in your EPA Region (if you are in one of the DI Programs listed in the table above) of your intent to close the well.	At least 30 days prior to abandonment.
	Must meet any state-established reporting requirements (if you are in one of the Primacy States listed in the table above).	The date in state-established reporting requirements.
New or converted (construction not started before [insert effective date].	Are prohibited	[insert effective date].

ADDITIONAL REQUIREMENTS FOR MOTOR VEHICLE WASTE DISPOSAL WELLS IN SOURCE WATER PROTECTION AREAS

[See § 144.85 to determine if these additional requirements apply to you]

If your motor vehicle waste disposal well is * * * (well status)	Then you * * * (requirement)	By * * * (deadline)
Existing (operational or under construction by [insert effective date]).	*Proposal 1:* Must close the well	Within 90 days of the completion of your local source water assessment program, starting [insert effective date]; your UIC Program Director may extend the closure deadline for up to one year if the most efficient compliance option is connection to a sanitary sewer or installation of new treatment technology.
	Proposal 2: Must close the well or apply for a waiver from the ban by seeking a permit.	Within 90 days of the completion of your local source water assessment program, starting [insert effective date]; your UIC Program Director may extend the closure deadline, but not the permit application deadline, for up to one year if the most efficient compliance option is connection to a sanitary sewer or installation of new treatment technology.
	Proposal 2: Must meet MCLs at the point of injection while your permit application is under review, if you choose to keep operating your well.	The date you submit your permit application.
	Proposal 2: Must comply with all permit conditions, if you choose to keep operating your well, including requirements to meet MCLs at the point of injection, follow best management practices, and monitor your injectate and sludge quality.	The date(s) specified in your permit.
	Both proposals: Must notify the UIC Program Director in your EPA Region (if you are in one of the DI Programs listed in the table above) of your intent to abandon the well.	At least 30 days prior to abandonment.

ADDITIONAL REQUIREMENTS FOR MOTOR VEHICLE WASTE DISPOSAL WELLS IN SOURCE WATER PROTECTION AREAS—Continued

[See § 144.85 to determine if these additional requirements apply to you]

If your motor vehicle waste disposal well is * * * (well status)	Then you * * * (requirement)	By * * * (deadline)
	Both proposals: Must meet any state-established reporting requirements (if you are in one of the Primacy States listed in the table above).	The date in state-established reporting requirements.
New or converted (construction not started before [insert effective date]).	Are prohibited	[insert effective date].

ADDITIONAL REQUIREMENTS FOR CLASS V INDUSTRIAL WELLS IN SOURCE WATER PROTECTION AREAS

[See § 144.85 to determine if these additional requirements apply to you]

If your industrial well is * * * (well status)	Then you * * * (requirement)	By * * * (deadline)
Existing (operational or under construction by [insert effective date]).	Must close the well or make sure fluids in the well meet the primary MCLs listed in 40 CFR Part 142 or other health-based limits selected by the Director for contaminants without primary MCLs.	Within 90 days of the completion of your local source water assessment program, starting [insert effective date]; your UIC Program Director may extend this deadline for up to one year if the most efficient compliance option is connection to a sanitary sewer or installation of new treatment technology.
	Must notify the UIC Program Director in your EPA Region (if you are in one of the DI Programs listed in the table above) of your intent to abandon the well.	At least 30 days prior to abandonment.
	Must meet any state-established reporting requirements (if you are in one of the Primacy States listed in the table above).	The date in state-established reporting requirements.
New or converted (construction not started before [insert effective date]).	Are prohibited unless you make sure fluids in the well are always below the primary MCLs listed in 40 CFR Part 142 or other health-based limits selected by the Director for contaminants without primary MCLs.	[insert effective date].

§ 144.87 How do I close my Class V injection well?

The following describes the requirements for closing your Class V injection well.

(a) *Closure.* (1) Prior to closing a Class V cesspool, motor vehicle waste disposal well, or industrial well, you must plug or otherwise close the well in a manner that complies with the prohibition of fluid movement standard in § 144.12 and summarized in § 144.82(a) above. If the UIC Program Director in your state or EPA Region has any additional or more specific closure standards, you have to meet those standards too. You also must dispose or otherwise manage any soil, gravel, sludge, liquids, or other materials removed from or adjacent to your well in accordance with all applicable Federal, state, and local regulations and requirements.

(2) This does not mean that you need to cease operations at your facility, only that you need to close your well. A number of alternatives are available for disposing of waste fluids. Examples of alternatives that may be available to motor vehicle stations include: recycling and reusing wastewater as much as possible; collecting and recycling petroleum-based fluids, coolants, and battery acids drained from vehicles; washing parts in a self-contained, recirculating solvent sink, with spent solvents being recovered and replaced by the supplier; using absorbents to clean up minor leaks and spills, and placing the used materials in approved waste containers and disposing of them properly; using a wet vacuum or mop to pick up accumulated rain or snow melt, and if allowed, disposing of it through a publicly owned treatment works; or, connecting floor drains to a municipal sewer system or holding tank, and if allowed, disposing of the holding tank contents through a publicly owned treatment works. You should check with the publicly owned treatment works you might use to see if they would accept your wastes.

(b) [Reserved]

PART 145—STATE UIC PROGRAM REQUIREMENTS

8. The authority citation for part 145 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

§ 145.11 [Amended]

9. Section 145.11 is amended by adding paragraph (a)(32) and revising the first sentence in paragraph (b)(1):

§ 145.11 Requirements for permitting.

(a) * * *

(32) Section 144.86—(What are the additional requirements?);

(b)(1) States need not implement provisions identical to the provisions listed in paragraphs (a)(1) through (a)(32) of this section.

* * *

* * * * *

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

10. The authority citation for part 146 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

11. Section 146.3 is amended by adding the following new definitions in alphabetical order: ''cesspool,'' ''drywell,'' ''improved sinkhole,'' ''sanitary waste,'' ''septic system,'' and ''subsurface fluid distribution system,''

and by revising the definitions of ''well'' and ''well injection'' to read as follows:

§ 146.3 Definitions.

* * * * *

Cesspool means a ''drywell'' that receives solely untreated sanitary waste, and which sometimes has an open bottom and/or perforated sides.

* * * * *

Drywell means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

* * * * *

Improved sinkhole means a naturally occurring karst depression which has been modified by man for the purpose of directing and emplacing fluids into the subsurface.

* * * * *

Sanitary waste means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities provided the waste is not mixed with industrial waste.

* * * * *

Septic system means a ''well'' that is used solely to emplace sanitary waste below the surface and is comprised of a septic tank and subsurface fluid distribution system.

* * * * *

Subsurface fluid distribution system means an assemblage of perforated pipes, drain tiles, or other mechanisms intended to distribute fluids below the surface of the ground.

* * * * *

Well means:

(1) A bored, drilled, or driven shaft;

(2) A dug hole whose depth is greater than the largest surface dimension;

(3) An improved sinkhole; or

(4) A subsurface fluid distribution system.

Well injection means the subsurface emplacement of fluids through a well.

* * * * *

12. Section 146.5 is amended by adding a new paragraph (a)(3) and revising paragraph (e) to read as follows:

§ 146.5 Classification of injection wells.

(a) * * *

(3) Radioactive waste disposal wells which inject fluids below the lowermost formation containing an underground source of drinking water within one quarter mile of the well bore.

* * * * *

(e) *Class V.* Injection wells not included in Class I, II, III, or IV. Specific types of Class V injection wells are described in § 144.81 in subpart G of 40 CFR part 144.

[FR Doc. 98–19936 Filed 7–28–98; 8:45 am]

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federal register

Wednesday
July 29, 1998

Part III

Department of Education

34 CFR Parts 600 and 668

Institutional Eligibility; Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

RIN 1840–AC47

Institutional Eligibility; Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends the Institutional Eligibility and Student Assistance General Provisions regulations. These technical amendments are necessary to correct cross-references, delete references to programs that are no longer funded, and make a number of nomenclature changes that provide the correct names of various Title IV, HEA programs.

EFFECTIVE DATE: These regulations take effect July 29, 1998.

FOR FURTHER INFORMATION CONTACT: Lorraine Kennedy, U.S. Department of Education, 600 Independence Avenue, SW, Regional Office Building 3, Room 3045, Washington, D.C. 20202–5451. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Institutional Eligibility regulations, 34 CFR part 600, and the Student Assistance General Provisions regulations, 34 CFR part 668 are amended to clarify regulations, and to correct errors and omissions.

All references to Income Contingent Loan (ICL), State Postsecondary Review Entity (SPRE), and Presidential Access Scholarship (PAS) throughout 34 CFR parts 600 and 668 have been removed because the ICL program was eliminated and the other two programs were not funded.

References to the name of the Direct Loan Program under 34 CFR parts 600 and 668 have been changed to conform to the program names set fourth in the William D. Ford Federal Direct Loan (Direct Loan) Program regulations, 34 CFR part 685. As required, under 34 CFR part 685 and appropriate sections throughout the regulations, other conforming changes have been made to incorporate the Direct Loan Program.

All references to § 668.7 have been removed and replaced with references to the correct sections in Subpart C of the Student Assistance General Provisions in accordance with the regulations that were published in the **Federal Register** on December 1, 1995.

These regulations change current Student Right-to-Know (SRK) regulations by incorporating some technical corrections to the December 1, 1995 SRK regulations; these changes are made to reflect statutory provisions omitted in the December 1, 1995 SRK regulations. Other changes being made in these regulations reflect recent statutory changes to the SRK provisions of the Higher Education Act of 1965, as amended (HEA); these recent statutory changes were made to the HEA by Pub.L. 105–18 entitled ‘‘1997 Emergency Supplemental Appropriations Act for Recovery From Natural Disasters, and for Overseas Peacekeeping Efforts, Including Those in Bosnia.’’

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the regulatory changes in this document correct minor technical errors and omissions in the Institutional Eligibility regulations, 34 CFR part 600 and the Student Assistance General Provisions regulations, 34 CFR part 668. The changes in this document do not establish any new substantive rules. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B). For the reasons stated, the Secretary also waives the delayed effective date under 5 U.S.C. 553(d).

The Secretary certifies that these final regulations will not have significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education. These regulations contain technical amendments designed to clarify and correct current regulations. The changes will not have a significant economic impact on the institutions affected.

Paperwork Reduction Act of 1995

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

List of Subjects in 34 CFR Parts 600 and 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: July 21, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends Parts 600 and 668 of Title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

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

Authority: 20 U.S.C. 1088, 1091, 1094, 1099b. 1099c, and 1141, unless otherwise noted.

§ 600.2 [Amended]

2. Section 600.2 is amended by capitalizing the ‘‘P’’ in the definition of ‘‘Federal Family Education Loan (FFEL) programs’’.

§ 600.9 [Amended]

3. Section 600.9(b)(2)(ii) is amended by removing ‘‘or SPRE,’’.

§ 600.40 [Amended]

4. Section 600.40 is amended by adding the word ‘‘or’’ at the end of paragraph (a)(1)(iv)(A), removing ‘‘; or’’ at the end of paragraph (a)(1)(iv)(B) and adding a period in its place, and removing paragraph (a)(1)(iv)(C).

§ 600.41 [Amended]

5. Section 600.41 is amended by adding the word ''or'' at the end of paragraph (a)(1)(ii)(F), removing the word ''or'' at the end of paragraph (a)(1)(ii)(G), removing paragraph (a)(1)(ii)(H), and removing paragraph (e)(3).

§ 600.55 [Amended]

6. Section 600.55 is amended by removing ''668.7(a)(4)(i) through (iii)'' from paragraph (a)(5)(i)(A) and adding, in its place, ''668.33''.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

7. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

8. Section 668.1 is amended by removing paragraphs (c)(3), (c)(7), and (c)(11); redesignating paragraphs (c)(4), (5), (6), (8), (9), (10), and (12) as paragraphs (c)(3), (4), (5), (6), (7), (8), and (10), respectively; and adding a new paragraph (c)(9) to read as follows:

§ 668.1 Scope.

* * * * *

(c) * * *

(9) The William D. Ford Federal Direct Loan (Direct Loan) Program (20 U.S.C. 1087a *et seq.*; 34 CFR part 685); and

* * * * *

9. Section 668.2(b) is amended by removing the definitions of ''Direct loan,'' ''Federal Direct PLUS loan,'' ''Federal Direct Stafford loan,'' ''Federal Direct Student loan,'' ''Federal Direct Student Loan (FDSL) Program,'' ''Income Contingent Loan (ICL) program,'' ''Payment period,'' and ''Presidential Access Scholarship (PAS) program'' and the authority citations following the definitions; by removing ''while they were students'', and by adding ''Federal Consolidation Loan,'' after ''(as in effect before October 17, 1986),'' the first time it appears in the definition of ''Federal Consolidation Loan program''; removing the word ''natural'' in the definition of ''Parent'' and adding, in its place, the word ''biological''; removing ''and in 34 CFR 691.2 for purposes of the PAS Program'' in the definitions of ''Valid institutional student information report (valid ISIR)'' and ''Valid student aid report (valid SAR)''; and adding new definitions for ''Direct Loan Program loan,'' ''Direct PLUS Loan,'' ''Direct Subsidized Loan,'' ''Direct Unsubsidized Loan,'' ''Federal Direct PLUS Program,'' ''Federal Direct Stafford/Ford Loan Program,'' ''Federal Direct Unsubsidized Stafford/Ford Loan Program,'' ''William D. Ford Federal Direct Loan (Direct Loan) Program'' and authority citations following the definitions in alphabetical order to read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Direct Loan Program loan: A loan made under the William D. Ford Federal Direct Loan Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

Direct PLUS Loan: A loan made under the Federal Direct PLUS Program.

(Authority: 20 U.S.C. 1078–2 and 1087a *et seq.*)

Direct Subsidized Loan: A loan made under the Federal Direct Stafford/Ford Loan Program.

(Authority: 20 U.S.C. 1071 and 1087a *et seq.*)

Direct Unsubsidized Loan: A loan made under the Federal Direct Unsubsidized Stafford/Ford Loan Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

* * * * *

Federal Direct PLUS Program: A loan program authorized by Title IV, Part D of the HEA that is one of the components of the Direct Loan Program. The Federal Direct PLUS Program provides loans to parents of dependent students attending schools that participate in the Direct Loan Program. The borrower is responsible for the interest that accrues during any period.

(Authority: 20 U.S.C. 10782 and 1087a *et seq.*)

Federal Direct Stafford/Ford Loan Program: A loan program authorized by Title IV, Part D of the HEA that is one of the components of the Direct Loan Program. The Federal Direct Stafford/Ford Loan Program provides loans to undergraduate, graduate, and professional students attending schools that participate in the Direct Loan Program. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period.

(Authority: 20 U.S.C. 1071 and 1087a *et seq.*)

Federal Direct Unsubsidized Stafford/Ford Loan Program: A loan program authorized by Title IV, Part D of the HEA that is one of the components of the Direct Loan Program. The Federal Direct Unsubsidized Stafford/Ford Loan Program provides loans to undergraduate, graduate, and professional students attending schools that participate in the Direct Loan Program. The borrower is responsible for the interest that accrues during any period.

(Authority: 20 U.S.C. 1087a *et seq.*)

* * * * *

William D. Ford Federal Direct Loan (Direct Loan) Program: The loan program authorized by Title IV, Part D of the HEA.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 668.8 [Amended]

10. Section 668.8(d)(3) is amended by removing ''Federal Stafford Loan, Federal PLUS, and Federal SLS'' and adding, in its place, ''FFEL and Direct Loan''.

§ 668.13 [Amended]

11. Section 668.13 is amended by removing ''the FDSL Program, or the Federal Stafford Loan, Federal SLS, or Federal PLUS Program'' and adding, in its place, ''the Direct Loan Program, or the FFEL Program,'' in paragraph (a)(4)(i) introductory text; and removing ''(f)(1)'' and adding, in its place, ''(d)(1)'' in paragraph (d)(2)(i).

12. Section 668.14 is amended by removing paragraph (b)(4)(ii); redesignating paragraphs (b)(4)(iii) through (vi), as (b)(4)(ii) through (v), respectively; removing ''Federal Stafford Loan, Federal PLUS, and Federal SLS'' and adding, in its place, ''Federal Stafford Loan and Federal PLUS'' in redesignated paragraph (b)(4)(ii); removing ''Federal SLS,'' in paragraph (b)(7); removing ''Federal Stafford Loan, Federal PLUS, and Federal SLS'' and adding, in its place, ''Federal Stafford Loan and Federal PLUS'' in paragraph (b)(15); removing ''State postsecondary review entities designated under 34 CFR part 667,'' in paragraph (b)(17); removing '', State postsecondary review entities designated under 34 CFR part 667,'' in paragraph (b)(23); and revising paragraphs (b)(8), (11), and (16) to read as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(8) It will not provide any statement to any student or certification to any lender in the case of an FFEL Program loan, or origination record to the Secretary in the case of a Direct Loan Program loan that qualifies the student or parent for a loan or loans in excess of the amount that the student or parent is eligible to borrow in accordance with sections 425(a), 428(a)(2), 428(b)(1)(A) and (B), 428B, 428H, and 455(a) of the HEA;

* * * * *

(11) In the case of an institution participating in the FFEL program, the

institution will inform all eligible borrowers, as defined in 34 CFR part 682, enrolled in the institution about the availability and eligibility of those borrowers for State grant assistance from the State in which the institution is located, and will inform borrowers from another State of the source of further information concerning State grant assistance from that State;

* * * * *

(16) In the case an institution that changes ownership that results in a change of control, or that changes its status as a main campus, branch campus, or an additional location, the institution will, to participate in the FFEL Program, develop a default management plan for approval by the Secretary and implement the plan for at least two years after the change in control or status;

* * * * *

13. In § 668.16, paragraph (e)(2)(i) is amended by removing ''668.7(c)'' and adding, in its place, ''668.34''; paragraph (j)(1) is amended by removing ''State postsecondary review entities designated under 34 CFR part 667,''; and paragraph (m)(1) introductory text and (m)(1)(i) and the authority citation are revised to read as follows:

§ 668.16 Standards of administrative capability.

* * * * *

(m)(1) Has an FFEL Program cohort default rate, a Direct Loan cohort rate, or where applicable, a weighted average cohort rate—

(i) As defined in § 668.17, that is less than 25 percent for each of the three most recent fiscal years for which the Secretary has determined the institution's rate; and

* * * * *

(Authority: 20 U.S.C. 1082, 1985, 1094, and 1099c)

14. Section 668.19 is amended by removing ''Federal Direct Stafford Loan'' and adding, in its place, ''Direct Subsidized Loan or Direct Unsubsidized Loan'' and by removing ''Federal Direct PLUS'' and adding, in its place, ''Direct PLUS Loan'' in paragraph (a)(3)(iv); removing ''Federal Direct Stafford Loan'' and adding, in its place, ''Direct Subsidized or Direct Subsidized Loan'' in paragraph (a)(3)(v); and by removing ''Federal Direct PLUS'' and adding, in its place, ''Direct PLUS Loan'' in paragraph (a)(3)(vi).

15. Section 668.20 is amended by revising paragraph (c) introductory text and paragraph (d)(2) to read as follows:

§ 668.20 Limitations on remedial coursework that is eligible for Title IV, HEA program assistance.

* * * * *

(c) In determining a student's enrollment status under the Title IV, HEA programs or a student's cost of attendance under the campus-based, FFEL, and Direct Loan programs, an institution may not take into account any noncredit or reduced credit remedial course if—

* * * * *

(d) * * *

(2) A student's cost of attendance under the campus-based, FFEL, and Direct Loan programs.

* * * * *

§ 668.21 [Amended]

16. Section 668.21 is amended by removing ''Pell Grant, SEOG, ICL, and'' in paragraph (a)(1), and adding, in its place, ''Federal Pell Grant, FSEOG, and Federal''.

17. Section 668.22 is amended by revising paragraph (c)(2)(ii); removing ''Federal Stafford loan, Federal PLUS, Federal SLS, Federal Direct Stafford, or Federal Direct PLUS Program'' in paragraphs (f)(1)(ii), (g)(3)(ii) and (h)(1), and adding, in its place, ''FFEL, or Direct Loan Program'; removing ''unsubsidized Federal Direct Stafford loans'' in paragraph (h)(1)(iv), and adding, in its place, ''Direct Unsubsidized Loans''; removing ''subsidized Federal Direct Stafford loans'' in paragraph (h)(1)(v), and adding, in its place ''Direct Subsidized Loans''; removing ''Federal'' and capitalizing ''L'' in ''loans'' in paragraph (h)(i)(vi); removing ''Federal Stafford Loan, Federal PLUS, Federal SLS, Federal Direct Stafford Loan or Federal Direct PLUS'' in paragraph (h)(2)(ii), and adding, in its place ''FFEL or Direct Loan''; removing ''Federal Stafford Loan, Federal PLUS, Federal SLS Program, Federal Direct Stafford, or Federal Direct PLUS'' in paragraph (f)(2)(i), and adding, in its place ''FFEL, or Direct Loan Program''; revising paragraph (g)(2)(ii)(B); removing ''Federal PLUS, Federal SLS'' in paragraph (h)(2)(iii), and adding, in its place, ''and Federal PLUS''; and removing ''Federal Stafford Loan, Federal PLUS, and Federal SLS'' in paragraph (h)(2)(iv), and adding, in its place, ''and FFEL''; removing ''Federal Stafford Loan, Federal PLUS, Federal SLS, Federal Direct Stafford, and Federal Direct PLUS programs'' in paragraph (h)(2)(v), and adding, in its place, ''FFEL, and Direct Loan Programs''; removing ''Federal Direct PLUS loans'' in paragraph (i), and adding, in its place, ''Direct PLUS Loans'' to read as follows:

§ 668.22 Institutional refunds and repayments.

* * * * *

(c) * * *

(2) * * *

(ii) Late disbursements of loans made under the FFEL and Direct Loan Programs in accordance with 34 CFR 682.207(d) and 34 CFR 685.303(d), respectively; and

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(B) Late disbursements of loans made under the FFEL and Direct Loan programs in accordance with 34 CFR 682.207(d) and 34 CFR 685.303(d), respectively; and

* * * * *

§ 668.25 [Amended]

18. Section 668.25 is amended by removing ''or Federal SLS'' in paragraph (c)(4); and removing '', Federal PLUS, and Federal SLS'' in paragraph (c)(4)(ii), and adding, in its place, ''and Federal PLUS''.

§ 668.26 [Amended]

19. Section 668.26 is amended by removing ''or FDSL'' in paragraph (b)(4); removing ''and ICL'' in paragraph (b)(6); removing ''and Federal SLS'' in paragraph (c)(2); removing ''Federal Stafford or Federal SLS'' both times it appears in paragraph (d)(2) introductory text and adding, in its place, ''Federal Family Education Loan Programs''; removing ''deliver'' in paragraph (d)(3) introductory text, and adding, in its place, ''disburse''; removing ''disbursement of a'' in paragraph (d)(3); removing ''FDSL'' in paragraphs (d)(3) introductory text and (d)(3)(i), and adding, in its place, ''Direct Loan''; removing ''Federal Direct Student'' in paragraph (d)(3) introductory text, and adding, in its place, ''Direct Loan Program''.

§ 668.32 [Amended]

20. Section 668.32 is amended by removing '', FSEOG, and SSIG'' and adding, in its place ''and FSEOG'' in paragraph (c)(1); and by removing ''Student'' and adding ''William D. Ford'' before ''Federal'' in paragraph (k)(5).

21. Section 668.42 is amended by revising paragraph (b) introductory text to read as follows:

§ 668.42 Preparation and dissemination of materials.

* * * * *

(b) Make those materials available to the student through appropriate publications and mailings before the student enters into a financial obligation with the institution, to—

* * * * *

§ 668.43 [Amended]

22. Section 668.43(c)(6) is amended by removing ''34 CFR 685.303'' and adding, in its place, ''34 CFR 685.304''; by removing ''Student''; by adding ''William D. Ford'' before ''Federal Direct''; and by removing ''and Federal SLS programs'' and adding, in its place, ''Program''.

§ 668.46 [Amended]

23. Section 668.46 is amended by removing ''July 1, 1996'' in paragraph (a)(1), and adding, in its place, ''September 1, 1996''; removing ''July 1st of one year and June 30th'' in paragraph (a)(2)(ii), and adding, in its place, ''September 1 of one year and August 31''; removing ''July 1, 1996 and June 30, 1997'' in paragraph (a)(5)(i), and adding, in its place, ''September 1, 1996 and August 31, 1997''; and removing ''June 30'' in paragraph (a)(5)(ii), and adding, in its place, ''August 31''.

§ 668.46 [Amended]

24. The heading of the note following § 668.48 is corrected to read ''Note to paragraph (c)''.

25. Section 668.49 is amended by adding '', categorized by race and gender'' before the period at the end of paragraph (a)(1)(iii); adding a new paragraph (a)(1)(vi); removing ''and (c)'' in paragraph (b), and adding, in its place, '', (c), and (d)''; and revising paragraph (d) to read as follows:

§ 668.49 Report on completion and graduation rates for student-athletes.

(a) * * *

(1) * * *

(vi) The average completion or graduation rate and transfer-out rate of the four most recent classes of entering students described in § 668.46 (a)(2), (3), and (4) who received athletically-related student aid, categorized by race and gender within each sport. If an institution has completion or graduation rates and transfer-out rates for fewer than four of those classes, it shall disclose the average rate of those classes for which it has rates.

* * * * *

(d) The provisions of § 668.46(e) apply for purposes of this section.

§ 668.51 [Amended]

26. Section 668.51(a) is amended by removing ''Federal Direct Student Loan (FDSL)'' and adding, in its place, ''Federal Direct Stafford/Ford Loan programs''.

§ 668.54 [Amended]

27. Section 668.54 is amended by removing ''Student'' in paragraph (a)(2)(i), and adding, in its place ''Stafford/Ford'.

§ 668.55 [Amended]

28. Section 668.55 is amended by removing ''FDSL, or'' in paragraph (c), and adding, in its place ''or Federal Direct Stafford/Ford Loan'; removing the comma after the word ''Grant'' and adding, in its place ''or'' in paragraph (c)(1); removing ''FDSL or program'' in paragraph (c)(1); and adding '', or originating a Direct Subsidized Loan'' after the word ''application'' in paragraph (c)(1); removing the comma after the word ''Grant'' and adding, in its place ''or'' in paragraph (c)(2); removing ''FDSL, or program'' after the word ''campus-based'' in paragraph (c)(2); removing ''or William D. Ford Federal Direct Loan application'' and adding, in its place ''application or previously originated Direct Subsidized Loan'' in paragraph (c)(2); and adding ''If the institution has previously originated a Direct Subsidized Loan for a borrower, the school shall not update the borrower's dependence status on the loan origination record.'' after the last sentence in paragraph (d)(2).

29. Section 668.58 is amended by removing the word ''or'' at the end of paragraph (a)(1)(ii); removing the period at the end of paragraph (a)(1)(iii) and adding, in its place, ''; or''; removing ''William D. Ford Federal'' in paragraphs (c), (d)(1), and (d)(2); revising paragraphs (a)(1)(i), (a)(2)(ii)(A), and (a)(2)(iii); and adding a new paragraph (a)(1)(iv) to read as follows:

§ 668.58 Interim disbursements.

* * * * *

(a) * * *

(1) * * *

(i) Disburse any Federal Pell Grant or campus-based program funds to the applicant;

* * * * *

(iv) Originate or disburse a Direct Subsidized Loan.

* * * * *

(2) * * *

(ii)(A) May make one disbursement of any combination of Federal Pell Grant, Federal Perkins Loan, or FSEOG funds for the applicant's first payment period; and

* * * * *

(iii)(A) May withhold certification of the applicant's Federal Stafford Loan application or origination of the applicant's Direct Subsidized Loan; or

(B) May certify the Federal Stafford Loan application or originate the Direct Subsidized Loan provided that the institution does not deliver Federal Stafford Loan proceeds or disburse Direct Subsidized Loan proceeds.

* * * * *

30. Section 668.59 is amended by adding ''Federal'' before ''Pell'' in paragraph (b)(1); replacing ''William D. Ford Federal'' with ''Federal Direct Stafford/Ford'' in paragraphs (c) introductory text and (c)(1)(ii); and revising paragraph (d)(1) to read as follows:

§ 668.59 Consequences of a change in application information.

* * * * *

(d)(1) If the institution selects an applicant for verification for an award year who previously received a Direct Subsidized Loan for that award year, and as a result of verification the loan amount is reduced, the institution shall comply with the procedures specified in § 668.61(b)(2).

* * * * *

31. Section 668.60 is amended by removing ''FDSL'' in paragraphs (b)(1)(i)(A) and (b)(1)(iii); removing ''FDSL'' and adding, in its place, ''Federal Direct Stafford/Ford Loan'' in paragraph (d); removing ''FDSL and PAS'' and adding, in its place, ''and Federal Direct Stafford/Ford Loan'' in paragraph (b) introductory text; removing ''CWS'' and adding, in its place, ''FWS'' in paragraph (b)(1)(i)(B); removing ''William D. Ford Federal Direct Loan'' in paragraph (b)(1)(i)(D) and adding, in its place, ''Direct Subsidized Loan''; and revising paragraphs (b)(1)(i)(C), (b)(1)(ii), and (e)(2) to read as follows:

§ 668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) Certify the applicant's Federal Stafford Loan application or originate the applicant's Direct Subsidized Loan; or

* * * * *

(ii) The institution shall return to the lender, or to the Secretary, in the case of a Direct Subsidized Loan, any Federal Stafford Loan or Direct Subsidized Loan proceeds that otherwise would be payable to the applicant; and

* * * * *

(e) * * *

(2) Certify that applicant's Federal Stafford Loan application, originate that applicant's Direct Subsidized Loan, or process that applicant's Federal Stafford Loan or Direct Subsidized Loan proceeds; or

* * * * *

32. Section 668.61 is amended by removing ''FDSL, FSEOG or'' and adding, in its place, ''or FSEOG'' in paragraph (a)(2)(ii)(B); removing ''or William D. Ford Federal Direct Loan'' in paragraph (b); redesignating paragraph (b) as (b)(1); and adding a new paragraph (b)(2) to read as follows:

§ 668.61 Recovery of funds.

* * * * *

(b) * * *

(2) If the institution determines as a result of the verification process that a student received Direct Subsidized Loan proceeds for an award year in excess of the student's need for the loan, the institution shall reduce or cancel one or more subsequent disbursements to eliminate the amount in excess of the student's need.

§ 668.81 [Amended]

33. Section 668.81 is amended by removing paragraph (e).

§ 668.83 [Amended]

34. Section 668.83 is amended by removing '', Federal PLUS, or Federal SLS'' and adding, in its place, ''or Federal PLUS'' in paragraph (c)(2)(i)(B); removing '', Federal PLUS, and Federal SLS'' and adding, in its place ''or Federal PLUS'' in paragraph (c)(2)(iii)(D); and removing '', Federal PLUS, or Federal SLS Program'' and adding, in its place, ''or Federal PLUS programs'' in paragraph (d)(1)(iii).

§ 668.94 [Amended]

35. Section 668.94 is amended by removing the period after ''termination'' and adding, in its place, ''—'' in paragraph (a); and removing '', Federal PLUS, or Federal SLS Program'' and adding, in its place, ''Program or Federal PLUS programs'' in paragraph (a)(5).

§ 668.130 [Amended]

36. Section 668.130 is amended by removing ''§ 668.7(a)(4)(ii)'' and adding, in its place, ''§ 668.33(a)(2)'' in paragraphs (a) and (b).

§ 668.131 [Amended]

37. Section 668.131 is amended by removing ''§ 668.7(a)(4)(ii)'' and adding, in its place, ''§ 668.33(a)(2)'' in the definitions of ''Eligible noncitizen'' and ''Primary confirmation.''

§ 668.132 [Amended]

38. Section 668.132 is amended by removing ''§ 668.7(a)(4)(ii)'' and adding, in its place, ''§ 668.33(a)(2)'' in paragraphs (a)(2) and (b).

§ 668.133 [Amended]

39. Section 668.133 is amended by removing ''§ 668.7(a)(4)(ii)'' and adding, in its place, ''§ 668.33(a)(2)'' in paragraphs (a) introductory text (twice), and (a)(1)(i).

§ 668.134 [Amended]

40. Section 668.134 is amended by removing ''§ 668.7(a)(4)(ii)'' and adding, in its place, ''§ 668.33(a)(2)'' in paragraphs (a) introductory text, (a)(1), (a)(3), (b)(1), and (b)(2).

§ 668.136 [Amended]

41. Section 668.136 is amended by removing ''§ 668.7(a)(4)(ii)'' and adding, in its place, ''§ 668.33(a)(2)'' in paragraphs (a) and (b) introductory text.

§ 668.137 [Amended]

42. Section 668.137 is amended by removing ''§ 668.7(a)(4)(ii)'' and adding, in its place, ''§ 668.33(a)(2)'' in paragraph (a); and removing ''or certify a Federal Stafford, Federal PLUS, or Federal SLS loan'' and adding, in its place, ''certify a Federal Stafford or Federal PLUS loan application, or originate a Direct Loan Program loan'' in paragraph (b).

43. Section 668.138 is amended by revising paragraphs (a) and (b) to read as follows:

§ 668.138 Liability.

(a) A student is liable for any SSIG, FSEOG, or Federal Pell Grant payment and for any Federal Stafford, Direct Subsidized, Direct Unsubsidized or Federal Perkins loan made to him or her if the student was ineligible for the Title IV, HEA assistance.

(b) A Federal PLUS or Direct PLUS Loan borrower is liable for any Federal PLUS or Direct PLUS Loan made to him or her on behalf of an ineligible student.

* * * * *

44. Section 668.139 is amended by revising paragraphs (b) and (d) to read as follows:

§ 668.139 Recovery of payments and loan disbursements to ineligible students.

* * * * *

(b) If an institution causes a Federal Stafford, Federal PLUS, Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan to be disbursed to or on behalf of an ineligible student for which it is not liable in accordance with § 668.138, it shall assist the Secretary in recovering the funds by notifying the lender in the case of an FFEL Program loan or the Secretary in the case of a Direct Loan Program loan that the student has failed to establish eligibility under the requirements of §§ 668.201 or 685.200, as appropriate.

* * * * *

(d) If an institution is liable for a Federal Stafford, Federal PLUS, Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan disbursement to an ineligible student, the institution shall repay an amount equal to the disbursement to the lender in the case of an FFEL Program loan or the Secretary in the case of a Direct Loan Program loan, and provide written notice to the borrower.

§ 668.166 [Amended]

45. Section 668.166(a)(1) is amended by adding ''other than Federal Perkins Loan Program funds,'' after ''title IV, HEA program funds,'.

46. Section 668.167 is amended by revising paragraph (a)(3) to read as follows:

§ 668.167 FFEL Program funds.

(a) * * *

(3)(i) An institution may not request a lender to provide it with loan funds by EFT or master check for any Federal PLUS Program loan earlier than 13 days before the first day of classes for any payment period.

(ii) An institution may not request a lender to provide with loan funds by check requiring the endorsement of the borrower for any Federal PLUS Program loan earlier than 30 days before the first day of classes for any payment period.

* * * * *

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